SUPREME COURT OF THE UNITED STATES.

No. 162.

JOHN E. NEALE, APPELLANT,

VS.

BENJAMIN I. NEALE AND MARY H. NEALE, HIS WIFE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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a In the Supreme Court of the District of Columbia, the of day, 1867.

I, Return J. Meigs, clerk of the Supreme Court of the District of Columbia, certify, that originals, of which the following writings are true and complete copies, are on file and of record in the clerk's office of said court, and that said originals, together, constitute the record of the proceedings of said court in a certain cause therein depending and lately decided, entitled, Benjamin N. Neale and Mary H. Neale, his wife, compl'ts, *vs.* John H. Neale, defendant. No. 412, Equity. Docket 7.

In testimony whereof, I have subscribed my name and caused the seal of the said Supreme Court to be hereunto affixed the day and year aforesaid.

[SEAL.] R. J. MEIGS, *Clerk.*

Supreme Court of the Dist. of Columbia.

Original bill.—Filed March 29, 1865.

BENJAMIN I. NEALE and MARY H. Neale, his wife,
vs.
JOHN E. NEALE.
} No. 412. Equity. Docket 7.

To the honorable the Justices of the Supreme Court of the District of Columbia, in equity sitting:

Benjamin I. Neale and Mary H. Neale, his wife, residents of the city of Washington, in the District of Columbia, bring this their bill of complaint against John E. Neale, a resident of the same city and district:

And thereupon, your orator and oratrix complain and say, that during and before the year A. D. 1858, the said John E. Neale, who is the father of your orator, and whom your orator and oratrix may be made a party defendent to this bill of complaint, was, or pretended to be, seized and possessed of sundry lots of ground, situate and lying in the aforesaid city of Washington; and among others of lot No. 18, in square 517, in said city; that in said year your orator was seeking the hand of your oratrix in marriage, and the said defendant, his father, desirous that your orator, his son, should
2 marry and be settled in life, approved of and encouraged the marriage which your orator was then endeavoring to bring about between himself and your oratrix; and, as an inducement thereto and for the promotion thereof, then promised and agreed that if the same should be consummated, he, the defendant, in consideration thereof, would, by a good and sufficient deed of conveyance, give and convey one, or a part of one, of the aforesaid lots of ground of which he was then seized and possessed, as aforesaid, to your orator

and oratrix, or to one of them, in fee simple, to the end that with money then belonging, or then expected to belong to your oratrix, they might erect thereon a dwelling-house for their habitation and home; that implicitly confiding in and relying upon the defendant's said promise and agreement, and influenced thereby, and partly and in consideration thereof, your orator and oratrix did intermarry, on or about the 7th day of September, in the year aforesaid; that at or immediately after their said intermarriage, the said defendant, mindful of his aforesaid promise and agreement, and with reference thereto, declared, in the presence of witnesses, that, as his bridal present to
your oratrix, he had given to her a lot of ground in the aforesaid
3 city, on which to build a dwelling-house for herself; that
shortly thereafter, and in part performance of his aforesaid promise and agreement, the said defendant put your orator and oratrix in possession of an unimproved part of the aforesaid lot No. 18, in square No. 517, that is to say, of the east part of said lot, fronting about twenty (20) feet on H street, north, in said city, and running back, with that width, the entire depth of said lot, and which, in its improved condition, was then worth about one thousand or twelve hundred dollars; that still reposing full confidence in the aforesaid promise and agreement of the said defendant, your orator and oratrix unhesitatingly accepted the possession, given as aforesaid, of the said last-mentioned piece or part of a lot of ground; and, with the knowledge and full consent and approval of the defendant, proceeded to erect thereon, for their own use and benefit, a valuable dwelling-house, at an expense of about four thousand dollars, and paid for the same with or out of moneys previously belonging to your oratrix, and which had come into the possession of your orator by reason, only, of his intermarriage with your oratrix; that your said oratrix cheerfully consented to this appropriation of said money, because it was understood between your orator and herself that the deed for the
4 said piece of ground, which had been promised, as aforesaid
by the defendant, should be made to her and her heirs, or in trust for her and their use; that having completed the erection of said dwelling-house on said piece or part of a lot of ground, your orator and oratrix, with the knowledge and full approval of the defendant, assumed the ownership and control of it, and of the ground on which it stood, and of its appurtenances; and, in the exercise of such ownership and control, your orator rented the said dwelling-house and premises to Mrs. Deggs; who, pursuant to said renting, and with the knowledge of the defendant, took possession thereof, and afterwards occupied the same, as tenant to your oratrix, in whose behalf, and for whose special use and benefit, your orator had acted in renting said property, as aforesaid; that as well during the progress of its erection as after the said dwelling-house had been finished, and whilst the same was occupied by the said Degges, as tenant to your oratrix, as aforesaid, the said defendant often, on many and various occasions, avowed and reiterated his intention to execute and deliver a deed for the
5 aforesaid piece or part of a lot of ground and premises in ac-

cordance with the aforesaid promise and agreement in that behalf; and not doubting his good faith, but implicitly confiding therein, your orator and oratrix beguiled into a false security by what afterwards proved to have been a misplaced confidence, did not, at any time, urge or importune the defendant to execute and deliver said deed, but confidently expected that he would, in good season, voluntarily, and of his own motion, execute and deliver the same in fulfilment of his aforesaid promise and agreement. Further, your orator and oratrix say that this state of thing continued until some time in the year 1861, when your orator and oratrix left the city of Washington for a time on a visit to the country, and on their return they found that in their absence, and without their consent, the said defendant had taken possession of and occupied by himself or others the hereinbefore described dwelling-house and premises, and has, in like manner, ever since continued to occupy or control the same without the consent and against the wishes of your orator and oratrix; and although, even since taking possession thereof as
6 aforesaid, he has promised to execute and deliver a deed for
the same as previously he had so often engaged to do, yet, whenever he has been asked or required to fulfil his said promise, he has refused, and still refuses to perform the same. Under these circumstances, your orator and oratrix aver and charge that the hereinbefore described dwelling-house and ground, with the appurtenances, belong in equity to your oratix, and that she is entitled to a conveyance of the same from the said defendant in accordance with his aforesaid promise and agreement, and to an account of the rents, issues, and profits thereof since the defendant took possession of the same as aforesaid. But, inasmuch as your orator and oratix are remidiless in the premises, at and by the rules and practice of the common law courts, and can only have full and adequate relief in equity, where the specific execution of contracts can be enforced and matters of trust are cognizable and relievable, may it please your honors, the premises considered, to grant unto your orator and oratrix the United States writ of subpœna, to be directed to the aforesaid Jno. E. Neale, commanding him to be and appear, on a
7 day therein to be designated, before your honorable court,
then and there full, true, and perfect answer to make, upon his corporal oath, to all the allegations and charges hereinbefore made and charged, and that he be ordered and decreed to convey to your oratrix and her heirs, or to your orator in trust, for her and their use, by a good and sufficient deed of conveyance, the piece or part of a lot of ground and premises hereinbefore particularly described; and further, that he be required to state when he entered upon and took possession of the aforesaid dwelling-house and premises; and also to render a fair and accurate account of the rents, issues, and profits of the same during his said occupancy or control thereof, as well as to answer fully and distinctly whether he did not before, and at the time of the intermarriage of your orator and oratrix, in consideration of such intermarriage, and as an inducement thereto, promise and agree to convey a lot, or part of a lot of ground lying in the city

aforesaid, as hereinbefore averred to your orator and oratrix, or one
of them; whether the said intermarriage did not take place
8 after the making by him of his said promise and agreement;
whether he has not, on repeated occasions, since the consummation
of said marriage, reiterated his said promise to convey by a
good and sufficient deed of conveyance, the piece or part of a lot of
ground and premises hereinafter particularly described to your said
orator and oratrix, or to one of them, or what were the nature and
terms of his said promises and undertaking; whether your orator
and oratrix did not, with his knowledge, consent, and approbation,
enter upon and take possession of the aforesaid piece or part of a lot
of ground and premises; whether the said piece or part of a lot of
ground was then unimproved and vacant; what was its then actual,
and what its then assessed value; whether your orator did not,
shortly after his said marriage with your oratrix and how soon thereafter,
construct and build a dwelling-house upon the said ground
with the full knowledge and consent of the said defendant, and
9 pay for the same out of monies previously belonging to your
oratrix as hereinbefore averred; whether your orator did not
afterwards, and as hereinbefore averred, rent the said dwelling-house
and premises to the aforesaid Mrs. Degges, and whether she did
not, pursuant to said renting, enter upon and occupy and possess the
same; how long under said renting, did she continue to occupy the
said dwelling-house and premises, and at what time, and in what circumstances
did the defendant take possession of the same, or assume
the control thereof; and that your orator and oratrix may have
such other and further relief in the premises as to your honors may
appear equitable and agreeable to equity and good conscience, and
as in duty bound the will ever pray, &c.

KENNEDY & WEBB,
Sol'rs for Compl'ts.

10 In the Supreme Court of the District of Columbia, March 29, 1865.

Summons to answer.—Issued M'ch 29, '65.

Benj. I. Neale and **Mary H. Neale**, his wife, compl'ts, *against.* **Jno. E. Neale**, defendant.	No. 412. Equity.

The President of the United States to Jno. E. Neale, defendant:

You are hereby commanded to appear in this court, at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the bill under the pain of attachment and such other process of contempt as the court shall award.

[SEAL.] Witness: D. K. CARTER, *Chief Justice.*
R. J. MEIGS, *Clerk.*

Memorandum. That the defendant is to enter his appearance in this suit in in the clerk's office, on or before the special term in which this writ is returnable; otherwise the bill may be taken for confessed.

Marshal's return.

Summoned March 29, 1865.

WARD H. LAMON, *Marshal.*

11 To the Supreme Court of the District of Columbia. In chancery.

Answer of defendant.—Filed June 6, '65.

The answer of John E. Neal to the bill of complaint of Benjamin I. Neal and Mary H. Neal, his wife, against him in chancery exhibited.

This respondent, saving and reserving all benefit of exceptions to the manifold errors, uncertainties, and imperfections in the said bill contained for answer thereto, or unto so much and such parts thereof as he is advised, it is necessary for him to make answer unto, answering, says:

It is true as stated, that during and before the year 1858, respondent was seized and possessed as owner of sundry lots of ground, situated in the city of Washington, in the District of Columbia, and among them of lot No. 18, in square No. 517, and that the complainant, Benjamin is the son of this respondent.

It is untrue that in the year 1858, or at any time when the complainant Benjamin was about to be married to the complainant Mary his wife, this respondent, desirous that said Benjamin should be married and settled in life, engaged, promised or agreed, that if
12 said marriage should be consummated, respondent would, in
consideration thereof, give and convey to the complainants, or either of them, as alleged, any part or portion of said Lot No. 18; and it also untrue, that in consideration of any such promise or undertaking on the part of respondent, complainants did marry.

It is also untrue that respondent, about the time of said marriage, (which is admitted to have taken place as alleged,) or at any time before, in part performance of any such promise or undertaking, put the complainants in possession of the alleged described part of said lot promised, as pretended to be conveyed, and that in pursuance of the alleged promise and undertaking of respondent, the complainants confiding therein, entered upon and took possession of said described piece of ground, and proceeded to erect a dwelling-house thereon, as alleged, though respondent admits a dwelling-house, worth about the alleged price of $5,000, was erected by the complainant, Benjamin, upon said described piece of ground, which complainant avers was worth about $1,500, but has since largely increased in value. And this respondent, not having made the pretended promise and undertaking at any time, it is of course untrue that the respondent reitterated the same, though he admits he knew that said com-
13 plainant under the circumstances, which will be fully detailed
hereafter, and after its completion, held the same until 1861.

It is true that respondent, during the absence of complainant from said city in July, 1861, took possession of said dwelling-house and

premises, and has since occupied the same with his family, the tenant having abandoned the same. At the time respondent took possession the complainant was the tenant of a house belonging to Moore, who had levied upon his furniture for non-payment of rent, and the respondent thereupon paid the rent due by the complainant, and he and his wife being then absent, and removed the furniture of complainant for the purpose of preserving the same, and also the furniture of respondent into said dwelling-house, thereby leaving vacant and exposed the house which respondent had been occupying, which belonged to him, but was of far less value than said dwelling-house; and said house so vacated continued unrented for about five months, and when rented at the end of that time yielded respondent only $10 per month for one year. Respondent further says, that three or four days after he took possession, as aforesaid, the complainant, who, with his said wife and children had been on a visit to Charles county, Maryland, for about three months,
returned to said city and was then received into said dwel-
14 ling-house, and that complainat, said Benjamin, his and said
family thenceforward occupied said dwelling-house and premises as boarder with respondent and his family until Dec., 1862, and the complainant also so boarded, except from February, 1862, to about November, 1863, during which time he was an inmate of the Insane Asylum, owing to intemperate habits, (in consequence of which the protection of his family devoted on respondent;) and further, that during said occupation complainant and his family were maintained and supported by this respondent, and that during the sojourn of said complainant at said asylum all the expenses thereof, amounting to about four hundred dollars, were borne and paid by respondent, and also other expenses, induced by the irregularities of complainant.

And this respondent left the said dwelling-house in December, 1862, and that he has never demanded the possession thereof. And respondent further denies that after taking possession, as aforesaid, he promised, as alleged, to convey the said piece of ground, or that he so promised at any time; that after the marriage of complainant, and in 1859, when complainant was about to receive certain money's belonging to his wife from her guardian, Stani-
slaus Maury, respondent knowing that the habits of com-
15 plainant were intemperate, and wishing to secure to said
wife and children the said moneys, and satisfied that the same would be in jeopardy if paid over to complainant, Benjamin, and by him used in business, consented, on the application of complainant, to give him lot 16, in said square, provided he would allow respondent or her said guardian to build with said moneys a dwelling-house thereon, and provided the said moneys should not be paid into the hands of complainant, but should for said purpose be applied and disbursed by respondent, or by the said Murray. The complainant agreed to these terms, provided the said described part of lot 18 instead of lot 16 was given; and to this change respondent assented subject to the terms and conditions aforesaid; under this agreement the said dwellng-house was commenced, but the said conditions

were wholly violated by complainant, who without the knowledge or approbation of respondent, received said moneys from said Murry and used the same in his said business, or otherwise, contrary to said agreement disposed of some. The erection of said dwelling-house having progressed as far as the first story, the complainant informed respondent that he, the complainant, would be disgraced and ruined if the work was stopped, and that he was without any means
to proceed further. Respondent then borrowed from the estate
16 of the late James Sears $2,008, for which he gave his note,
in which complainant joined, and said note was secured by a deed of trust upon said described portion of lot 18. This loan was paid over by respondent to complainant with the express agreement that it should be devoted to the erection of said dwelling-house and should not be otherwise disposed of, but said agreement was in its turn violated, and the money was used by one of the complainants, Benjamin Neale, in his said business. This said debt was one of those due when the complainant failed in said business, and was with interest paid by respondent; and respondent avers that he never intended to give said part of lot 18, save upon the terms and conditions aforesaid, and that upon the violation thereof he considered himself absolved from his said promise, and more especially so as complainant was largely beyond the value of the house indebted to this respondent.

And having fully answered said bill, the respondent prays he may be hence dismissed with costs, &c., and as in duty, &c.

JOHN E. NEALE.

Subscribed and sworn to before me this 12th day of October, A. D. 1866.

CHARLES WALTER, *J. P.*

17 Endorsement on the foregoing answer: The original answer
in this cause having been lost before the hearing of the cause, it is agreed that this may be filed in the place thereof, as the defendants answer, it being the same in substance as the original, if not in words. Kennedy & Webb, for compl'ts. E. C. Morgan, for defendants.

In the Supreme Court of the District of Columbia, June 17, 1865.

Replication.—Filed June 17, '65.

BENJAMIN I. NEAL, & MARY H. NEAL his wife, *v.* JOHN E. NEAL.	No. 412. Equity.

These repliants, saving and reserving to themselves all and all manner of advantage of exception, which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendant, for replication thereunto, saith, that they do and

will aver, maintain, and prove their said bill to be true, cer-
18 tain and sufficient to be answered unto by the said defendants,
and that the answer of the said defendant is very uncertain, evasive, and insufficient in the case to be replied unto by these repliants; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein, and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matter and things these repliants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays, as in duty by their said bill they have already prayed.

KENNEDY & WEBB,
For Compl'ts.

19 *Deposition for compl't.—Filed Ap.* 16, '66.

BENJAMIN J. NEALE & MARY H. NEALE
his wife,
vs.
JOHN E. NEALE.
No. 412. Equity.

WASHINGTON, D. C., *Oct.* 6, 1865.

Benjamin J. Neal, being duly sworn, depose and says:

Examined.

By Mr. Kennedy, counsel for the plaintiffs:

1st. interrogatory. State, if you please, your name, age, and occupation.

Answer. My name is Benjamin J. Neale. I am thirty-two years of age, and reside 438 I street, between 9th and 10th streets, north, in Washington City, and by occupation a dry-goods clerk for Sutton & Co.

2nd interrogatory. How long have you resided in this city?

Answer. I came here about [about] three years of age, and have resided here ever since.

3d interrogatory. State if you are one of the co-complainants in this cause, and the husband of Mary H. Neale, the complainant?

Answer. I am one of the complainants in this cause, and the husband of Mary H. Neale, the co-complainant.

4th interrogatory. State, if you please, the time of your intermarriage with Mary H. Neale.

Answer. I intermarried with Mary H. Neale September 7th, 1858.

20 5th interrogatory. Where, at and immediately previous to your marriage with Mary H. Neale did you reside?

Answer. I lived with my father, John E. Neale, the defendant in this cause, and in his family in this city.

6th interrogatory. How long previous to your marriage had you known your present wife?

Answer. About six years.

7th interrogatory. What was the maiden name of your wife, and where, and with whom, did she reside at the time of your marriage?

Answer. Her maiden name was Mary H. Hamilton, and resided with her mother in this city.

8th interrogatory. State, if you please, if her father was living at the time of your intermarriage; and if not, how long had he been dead.

Answer. He was not living at the time; I do not know how long he had been dead.

9th interrogatory. Was her mother a widow at the time of your marriage.

21 Answer. She was.

10th interrogatory. State, if you please, what degree, if any, of social intimacy existed at and previous to the time of your said intermarriage between your present wife and her mother on the one side and your father's family on the other?

Answer. They were very intimate.

11th interrogatory. Did the families frequently interchange visits; and especially was your present wife, and previous to your said marriage, very often a visitor or guest at your father's house?

Answer. They did; and she was a frequent visitor at my father's house.

12th interrogatery. State, if you please, whether your father and his family generally were aware of the relations subsisting between yourself and present wife previous to and about the time of your said intermarriage; and if so, whether his family, and especially himself, approved of, and in any manner encouraged, the marriage then in contemplation between you, and which subsequently took place.

Answer. They did understand the relations, and did approve of the contemplated marriage and encouraged it

22 13th interrogatory. Was not the contemplated marriage a matter of frequent conversation between yourself and your father?

Answer. It was.

14th interrogatory. At the time of your intermarriage, was your present wife possessed of property? and if so, in what did that property consist, and to what amount?

Answer. She was possessed of property. It consisted of notes secured by deeds of trust and stocks, amounting to over seventy-three hundred dollars.

15th interrogatory. Were those notes and stocks subsequently converted into money? and if so, did their proceeds come to you?

Answer. They were so converted into money and the proceeds came to me.

16th interrogatory. You have stated that previous to your marriage, and whilst it was in contemplation, it formed a subject of frequent conversation between yourself and father. State now, if in any of those conversations, and with reference to your then
23 contemplated marriage, your father agreed to give your pre-

sent wife any property; and if any, what description of property, and for what purpose in the event of the taking place of the said marriage between yourself and present wife.

Answer. He agreed to give my wife east part of lot 18, in square 517, in consideration of my putting up a house with my wife's money thereon for her benefit.

17th interrogatory. State whether you, on your part, acting in behalf of your present wife, agreed to accept said part of said lot, and to build thereon, for her benefit and with her money, dwelling-house, in accordance with the terms of your father's offer?

Answer. Yes; I accepted his proposition, and conducted the building of the house.

18th interrogatory. State, if you can, whether, in your hearing, your father, previous to said marriage, repeated the said offer to your present wife; and if so, whether she also accepted it?

Answer. He did, about the first of August, 1858, and she accepted it.

24 19th interrogatory. State whether at the time of your marriage, or immediately thereafter, he referred to his said offer; and if so, what was the character of the said reference.

Answer. He referred to it several times after the marriage, and was very anxious to have the building put up upon the terms he first proposed.

20th interrogatory. If in point of fact you took possession of the lot aforesaid for the purpose of building a house thereon for the benefit of your wife, and with her money, state how long it was after your said marriage, and whether your father was aware of your taking said possession for the purposes aforesaid, and assented thereto and approved thereof?

Answer. I took possession of the lot in the spring of 1859. I proceeded and did erect a building out of my wife's money. My father was aware of it; he living next door, and daily seeing the progress of the work.

21st interrogatory. About how long was that house in course of erection?

25 Answer. About six months before it was finally finished.

22d interrogatory. State if at any time during the progress of the building your father made any objection to its erection; and if so, what objection.

Answer. None whatever.

23d interrogatory. State, if you please, if during its course of erection your father appeared to take any interest in the building; and if so, in what way he manifested that interest.

Answer. He was about the building frequently, and seemed to take the same interest in it that any father might in his son's affairs.

24th interrogatory. What was the cost of that building?

Answer. About five thousand dollars.

25th interrogatory. Under what architect, and by what builder, was the house erected?

26 Answer. Samuel T. Morsell was the architect; Wise and Callahan done the brick work, and McElfresh the painting; Bird & Bro. did the carpenter's work.

26th interrogatory. By whom were the architect and builders of whom you have spoken employed to do their respective works on and about the building?

Answer. By myself.

27th interrogatory. By whom were they paid?

Answer. By myself.

28th interrogatory. What number of stories has the house?

Answer. Four stories.

29th interrogatory. On what street does this house front, and between what streets does it lie, and what frontage has it?

Answer. On H. street north, between 4th and 5th streets west, north side of H. street, fronting about 22 feet, in this city.

27 30th interrogatory. I understood you to say that the house was finished sometime in 1859. State what time in that year it was finished.

Answer. In the fall of 1859.

31st interrogatory. After the house was finished who assumed the control and ownership of it?

Answer. My wife, Mary H. Neale.

32d interrogatory. In what way did she manifest ownership of it?

Answer. By moving into the house and living there several months; then afterwards renting the house, and receiving the rents in her name.

33d interrogatory. State, if you please, whether your father was aware of those acts of ownership on her part and made any objection thereto; and if any, what objection.

Answer. He was aware of those acts of ownership, and never objected to the ownership.

34th interrogatory. You said those rents were received by your wife in her own name. State by whom the receipts were given from time to time for those rents, and in whose name were they given as owner of the rents.

28 Answer. I receipted for a portion of the money, and my father receipted for a portion in the name of my wife, Mary H. Neale.

35th interrogatory. To whom was that house rented by your wife?

Answer. It was rented to Mrs. Jane Deggs, by me as my wife's house.

36th interrogatory. About how long did she continue to occupy that house as the tenant of your wife?

Answer. About six months.

37th interrogatory. State about what time, and under what circumstances, she ceased to occupy it as your wife's tenant?

Answer. She ceased to occupy the house a few days after the 21st of April, 1861, being afraid of loosing the servants, as the army was advancing towards Washington.

38th interrogatory. Were you and your wife in this city at the
29 time Mrs. Deggs left that house? and if not, where were you?

Answer. We were in Charles county, in the State of Maryland, at the time Mrs. Deggs left.

39th interrogatory. Were you in Charles county, in the State of Maryland, at that time on a visit?

Answer. Yes.

40th interrogatory. About what time did you visit? end and state the time you returned to Washington.

Answer. About the first day of May, 1861.

41st interrogatory. On your return to Washington, whom did you find in the house that Mrs. Deggs had vacated?

Answer. My father and his family.

42d interrogatory. State whether they have remained in the house ever since, and are still there?

Answer. They have remained in possession of the house, and are still there.

43d interrogatory. State whether, to your knowledge, your wife ever authorized the defendant in this cause, or whether you, as
30 her agent, ever authorized him to take possession of said house, and to continue therein?

Answer. Neither myself nor my wife ever authorized him to take possession of the house to my knowledge; nor authorized him to continue therein.

44th interrogatory. State whether he has at any time since taking the possession of the house aforesaid paid your wife, or you as her agent, any rent for the house, or for his occupation thereof; and, if any, what amount.

Answer. He has not paid any rent either to my wife or myself, to my knowledge.

45th interrogatory. State to the best of your knowledge and belief the yearly rental value of said house, from May, 1861, to the present time?

Answer. At that time I could have rented the house for $800 per year; from that time to the present it has been worth at least eight hundred dollars.

46th interrogatory. State, if you please, whether after the
31 house was built, and before the commencement of this suit, the defendant promised repeatedly to make a deed of the ground upon which the house was built to your wife, or for her benefit?

Answer. He promised to make a deed to my wife for her benefit, within the time specified in the above interrogatory.

47th interrogatory. Did he frequently renew those promises? and if so, how frequently?

Answer. Several times; could not say how often

48th interrogatory. You have said that the defendant promised to convey part of the lot 18, in square 517, to your wife or for her benefit, but have not said what portion of said east part; and now, if you can, you will please say what number of feet of said east part of lot, he so agreed to convey?

Answer.. The whole of the east part of lot 18 then unimproved.

49th interrogatory. Does the house of which you have spoken, as having been built with your wife's money, occupy or cover the whole front of the then unimproved east part of said lot?

32 Answer. No; there is a space of about two feet in front?

Examination-in-chief of this witness here closed.

Cross-examined.

By E. C. Morgan, counsel for defendant:

1st interrogatory. What was the age of your wife at the time of your marriage?

Answer. She was twenty years of age; under 21 at the time of marriage.

2d interrogatory. Who was her guardian?

Answer. Stanislaus Murray.

3d interrogatory. Had he, as guardian, at the time of your wife's marriage, possession of her property?

Answer. Yes; he had.

4th interrogatory. You state in your examination-in-chief, that the property was turned over to you; can you give the time?

33 Answer. I cannot state positively, it was after my wife arrived of age.

5th interrogatory. Did you receive it all at one time?

Answer. Yes.

6th interrogatory. When you commenced the house in question, had all of your wife's property been converted into money; and if so, was the money in your hands?

Answer. Yes; sir.

7th interrogatory. Do I understand you to mean by the last answer that the money was in your hands in cash?

Answer. Not the whole; there was about two thousand dollars in my business.

8th interrogatory. How much in cash was in your hands?

Answer. I cannot state how much was in my hands in cash.

9th interrogatory. Can you state how much of your wife's money or property had been spent or disposed of up to the time of the beginning of the house, and from the time of your marriage?

34 Answer. I cannot.

10th interrogatory. Where did you live at the time you left Washington to make a visit to Charles county, which visit you spoke of in your examination-in-chief?

Answer. I was keeping house in Washington on H street, belonging to Douglas More.

11th interrogatory. You state that on your return from Maryland you found your father in possession of the house in question. Where did you and your family then go?

Answer. We went in that house for a short time.

12th interrogatory. How long were you there?

Answer. I went there about the first of May, and left about the last of January following.

13th interrogatory. Had you any children when you went to reside in the house?

Answer. Yes; I had one.

35 14th interrogatory. During the period just spoken of by you, from May to January, in which you and your family lived with your father's family, did you pay for yourself or family and board?

Answer. I did not; my father kept the house.

15th interrogatory. You left there the last of January, where did you go?

Answer. I went to the asylum across the river.

16th interrogatory. How long were you at the asylum across the river?

Answer. I was there until the following 29th of October, 1862.

17th interrogatory. Where did your family reside at that time?

Answer. They were most of the time at Mrs. Cain's.

18th interrogatory. Were they part of the time at your father's? and if so, how long?

Answer. I cannot state how long they were at my father's.

19th interrogatory. When you returned from the asylum, where did you and your family go?

36 Answer. We went to my father's. I then had two children.

20th interrogatory. How long were you there?

Answer. About six or seven weeks.

21st interrogatory. Did you pay any board all that time for yourself and your family?

Answer. No, sir.

22d interrogatory. Who paid your bill for the time you were in the asylum?

Answer. I do not know who paid the bills while I was at the asylum. Dr. Elliott paid for the first few months. I do not know who paid the balance.

Adjourned until Monday, October 9, 1865.

WASHINGTON, D. C., *Oct.* 9, 1865.

Met pursuant to adjournment, and adjourned until to-morrow, the 10th of October, 1865, at 11 o'clock.

WASHINGTON, D. C., *Oct.* 10, 1865.

Met pursuant to adjournment, and the cross-examination of Benjamin I. Neale proceeded with.

37 By Mr. Morgan, counsel for defendant:

23d interrogatory. To whom did you pay the money expended in building of the house in question?

Answer. I settled with Wise and Callahan, Bird & Brother, Mr. McElfresh, and Mr. Goodall, for gas fixtures, and Mr. Morsell, the architect; I settled with him.

24th interrogatory. How much did you pay each one?

Answer. I cannot say without the bills. I have already stated before, I think, about $5,000 in the aggregate.

25th interrogatory. You speak, in your conversation in you examination-in-chief, of a conversation which you had with your father before your marriage, in which he agreed, as alleged by you, that when you married, and provided you would with your wife's money put up a house on part of lot in question, that he would make a deed for said part of lot in question for your wife's benefit. Where did this agreement take place, who was present, and how long before you were married?

Answer. This agreement took place on the porch at my
38 father's house. My father, myself, and my wife were present.
This was about three or four weeks before my marriage.

26th interrogatory. Was the subject of your approaching marriage a subject of frequent conversation in your father's family when you were present?

Answer. Yes.

27th interrogatory. Was the fact that your father intended to give your wife the said part of lot in question the subject of frequent conversation in your father's family when you were present?

Answer. I heard it spoken of several times with the family, but oftener with him.

28th interrogatory. What members of your father's family were present at these conversations?

Answer. I cannot state.

29th interrogatory. Were any of your sisters present?

Answer. I believe they were on several occasions.

30th interrogatory. Were your mother and father present on these occasions?

39 Answer. I believe they were.

31st interrogatory. Were your brothers present?

Answer. I could not say that they were or not.

32d interrogatory. How many sisters have you?

Answer. Three sisters, and one half sister.

33d interrogatory. You state, in your examination-in-chief, that your father promised more than once since your marriage to make a deed for the benefit of your wife for said part of lot in question; can you state any place at which he made such promise, the time of the different promises, and who were present?

Answer. He made those promises at the house and at the store. I mean at his house and at my store. I cannot positively state the time; it was two or three months after my marriage, and prior to the building of the house, and after the building of the house more frequently. I believe my wife, my mother, Wm. E. Hamilton, and Hamilton Williams were present. They heard the conversations at
different times when they were not all present. Hamilton
40 Williams and Wm. E. Hamilton heard these conversations at
the store. My mother and my father were frequently; and I believe some of the other members of the family heard the conversations at the house.

34th interrogatory. Were those other members you speak of your brothers or sisters?

Answer. My sisters most frequently.

35th interrogatory. When the house in question was but a few feet above the ground, did you not go to your mother and endeavor to prevail on her to persuade your father to sell the lot and what was then in course of erection thereon for your benefit, and did not your mother refuse to do so, saying you desired to swindle your father?

Answer. I never went to my mother for any such purpose.

36th interrogatory. Did you go to her when the house was but a few feet above ground for any purpose whatever connected with it?

Answer. Not to my knowledge.

41 37th interrogatory. When the house was a few feet above ground, did not your mother, in a conversation which you had with her, tell you that her husband would never give you deed, and also that she never would for the part of lot in question?

Answer. She did not; and I would not have built the house if she had.

38th interrogatory. Have not both your father and mother both repeatedly told you during the course of erection of the house, and since the completion of the same, that a deed to your wife or yourself for it would never be given?

Answer. No.

39th interrogatory. Before the house was up to the first story, did you not go to your mother at her house and request her to send for your father (who was then in Maryland) to come to Washington to mortgage the part of lot in question, alleging that you would be disgraced if you didn't raise money, or words to that effect?

Answer. No, sir.

42 40th interrogatory. Did your mother, at the time and place referred to in the question just answered, ask you what became of your wife's money?

Answer. No, sir.

41st interrogatory. Did you, at the time and place just spoken of in the last two questions, tell your mother that your wife's money was all gone?

Answer. I do not recollect of any conversation of that kind.

42 interrogatory. Do you remember any conversation with her in which you told her that you did not get money enough from your wife's guardian to build the house?

Answer. I do not.

43d interrogatory. In any conversation with your mother, did she ask you what had become of your wife's money?

Answer. Never to my recollection.

44th interrogatory. When the house was in course of erection, did you write to your father, who was in Maryland, to come to Washington?

43 Answer. I may have done so; I do not recollect.

(This question was objected to by Mr. Kennedy, counsel for the plaintiffs; and the counsel for the defendant stated that he intend to follow it by a question directly connected with the house.)

45th interrogatory. Did you not write to your father, while he was in Maryland, to come to Washington, to mortgage the property in question for your benefit?

Answer. I do not recollect.

46th interrogatory. Did you, at any time during the course of erection of the house in question, go to your mother and try to persuade her to prevail upon your father to mortgage the house, alleging that you would be disgraced if you did not raise money, or words to that effect?

Answer. No, sir.

47th interrogatory. Did not you father, during the course of the erection of the house, borrow money from Mr. Sears, at your instance, on the said part of lot in question, and transfer the money to you?

44 Answer. He did; the house was nearly finished; this was prior to the finishing of the house. The money was borrowed upon the joint note of myself and father, secured by deed of trust upon the same property.

48th interrogatory. Did you join in the deed of trust?

Answer. No, sir.

49th interrogatory. For what amount was the note given, and did it bear interest?

Answer. The amount was about two thousand and eight dollars, and it bore interest.

50th interrogatory. For what purpose was this money borrowed?

Answer. It was borrowed to assist me in business.

51st interrogatory. Was it not borrowed solely to assist in the building of the house in question, with the express agreement of your father that the money should not go in your business?

Answer. No, sir; I did not owe that much on the house.

45 52d interrogatory. Did you or did you not apply to your father to give you a part of lot to build on, and did he not say that he would give you part of lot 16, in square 517, provided you would allow him or your wife's guardian, Mr. Murray, to disburse the money due your wife and build the house?

Answer. No, sir.

53d interrogatory. Was it not finally agreed between you and your father that the house should be built on the part of lot in question, namely 18, square 517, and that he would give a deed for said part of lot, provided he or Mr. Murray should be allowed to disburse the money in building the house, and to superintend the erection of the same, you to furnish the means for the erection of the house?

Answer. No; he merely agreed to give the lot.

54th interrogatory. Was it not one of the conditions upon which the said part of lot 18 was to be given, that the house should be built out of your wife's money, and that none of your wife's money should go into your business?

Answer. No sir; the house was to be built out of my wife's money. There was no understanding about my wife's money going into my business.

46 55th interrogatory. Have you not represented, since the

building of the house in question, that the house and lot was yours?

Answer. I have always claimed it.

56th interrogatory. Did you not represent that the house and lot was yours, and obtain credit upon that representation?

Answer. I do not recollect. I had as much credit prior to the building of the house as afterwards.

57th interrogatory. Have you not averred that the said house and lot in question belonged only in equity to yourself and wife, subject only to the payment of your debts?

Answer. Not to my recollection.

58th interrogatory. Have you or have you not averred that you and your wife were entitled to a conveyance for the premises in question?

Answer. I do not recollect.

47 59th interrogatory. Look at that equity bill, No. 154, in the Supreme Court for the District of Columbia, and state if it was filed at your instigation, and if you swore to the same.

(Bill exhibited to witness.)

Answer. Yes, sir.

60th interrogatory. Is there contained in the bill the following: "And your orator, Benjamin, being in possession of the said lot, and having expended so large a sum of money in erecting a good and substantial dwelling thereon, gave him a creditable standing in the community. Under the circumstances, your orator, Benjamin, undertook to carry on the business of a grocer in this city; took a store, obtained by purchase, partly for money, and in considerable degree upon credit, a large stock of the articles of merchandise belonging to and suitable for the business in which he had been for some years engaged. The liberal credits which were given him were founded upon the confidence entertained by these with whom he dealt that he was the actual owner of the house and lot above-mentioned."

(The bill being shown to the witness his answer is as follows:)

Answer. Yes, sir; it is in the bill. I objected to it at the time the bill was drawn.

(All of this answer, except "yes, sir, it is in the bill," excepted to by Mr. Morgan, defendant's counsel.)

48 61st interrogatory. Did you not swear in said bill as follows: "Your orators aver and charge that the said house and lot belong in equity to your orators, subject only to the payment of the debts of your said orator?"

Answer. Yes, sir.

62d interrogatory. Is the house and lot in said bill spoken of the same house and lot spoken of in this cause? The same being the subject of this cause?

Answer. Yes, sir.

(The defendant's counsel here rested the cross-examination.)

Re-examination of this witness.

By Mr. Kennedy, for plaintiffs:

1st interrogatory. Mr. Neale, on your cross-examination you have
said that some time in May, 1861, you returned to Washington from
your visit to Charles county, and then, with your wife and child,
went into your father's family to reside for awhile; and you also said
that your father was then living in the house which is now in ques-
tion in this cause. Now state, if you please, 1st, about how
49 old that child was at that time; 2ndly, what claim, if any, your
wife, or you in her behalf, made to the ownership of the pro-
perty in question; and 3dly, of whom was such claim made at that time.

Answer. The child was between one and two years of age. I asked my father why he was in the house. He said he took possession to keep the military from taking possession. I told him that he nor I were able to live in that house as residents. He then finally remarked to my mother, saying: Mary, let us go in our own house, and give Mary Neale her house.

2d interrogatory. Was that conversation held immediately upon your going into his family at the time referred to in the preceeding question?

Answer. I believe it was the day after my arrival.

3d interrogatory. You returned, you say, to your father's family in October, 1862, and that you then had two children. State the age of the youngest child at that time?

Answer. It was about seven months old.

4th interrogatory. You said you have settled for the building of
the house in question with Wise & Callahan, Bird & Bro,
50 and McElfresh and Goodall. State now, if, by that answer,
you meant to limit your settlements with reference to the
building of the house in question to the persons so named, or whe-
ther you meant that they were only some of the persons with whom
you settled, and that there may have been others with whom you also
settled in relation to said house.

Answer. I contracted with and paid all the builders connected with the building of the house. There may have been bills of other persons besides those named.

5th interrogatory. You have said that when the house was nearly completed you and your father, upon your joint note, borrowed of a Mrs. Sears the sum of two thousand eight dollars, or thereabouts. State now, if you can, whether said note was thereafter paid; and if so, by whom, and what provision, if any, you made for its payment.

Answer. The note was paid by my father, marked as confidential
debt to my wife; the time of my failure I made an assignment of my
goods to my father, he agreeing first to pay the two thousand and
eight dollars out of the proceeds of the goods so assigned on
51 that note. Then to pay the balance of the confidential debts,
to wit, Mr. Shaw's being about three thousand dollars; Mr.
Corcoran, nine hundred dollars; Mr. W. E. Hamilton about six or
seven hundred dollars.

6th interrogatory. Was the agreement made by your father with you to pay these confidential debts, at the time of your assignment to him, reduced to writing, or was it only a verbal agreement?

Answer. It was a verbal agreement.

(Objected to by Mr. Morgan, counsel for defendant.)

7th interrogatory. State, as nearly as you can, the date of your failure in business, and the date of the assignment to your father, of which you have spoken.

Answer. About January, 1861.

8th interrogatory. You have said that your father paid the note of two thousand and eight dollars to Mrs. Sears. State whether it was paid after your failure in business or before, and after the assignment or before the assignment of which you have spoken.

52 Answer. The note was paid after the assignment, and after the failure.

Adjourned until Thursday, the 12th of October, 1865.

WASHINGTON, D. C., *Oct.* 12, 1864.

Met pursuant to adjournment.

Re-cross-examined.

By Mr. Morgan, defendant's counsel, by permission of the plaintiff's counsel.

1st interrogatory. Did your mother at any time say to you that you were endeavoring to swindle your father out of the said part of lot in question?

Answer. No, sir; neither my mother nor my father.

B. J. NEALE.

Sworn to and subscribed before me this 12th day of October, 1865.

JOHN J. JOHNSON,
Special Examiner.

53 *Compl't's testimony.—Mary H. Neale.*

BENJAMIN J. NEALE & MARY H. NEALE, his wife,
vs.
JOHN E. NEALE.
No. 412.—Equity.

WASHINGTON, D. C., *Oct.* 12, 1865.

Examined.

By Mr. Kennedy, counsel for the plaintiffs:

Mary H. Neale, being duly sworn according to law, and says: My name is Mary H. Neale. I reside on I street, between 9th and 10th, in this city, and am 26 years of age. I am one of the parties prosecuting this suit. I am the wife of Benjamin J. Neale, the other complainant in this suit. I was residing, previous to my marriage, with my ma, in this city. My father was not living at [at] that time. My mother was a widow at that time; about how long she had been

a widow I do not know. I was very young at the time of the death of my father, and don't remember the time of his death. I had known my present husband about six years previous to my marriage. I knew the whole of my husband's family about six years previous to my marriage. At the time and previous to the marriage of my pres-
ent husband I resided several squares from the family of the
54 defendant in this cause. At the time, and sometime previous
to my marriage, there was a social intimacy existing between myself and mother and the family of the defendant. Some time previous to my marriage I was in the habit of visiting the defendant's house. The defendant was aware of the then contemplated marriage between myself and present husband, and he approved of and encouraged it. It was the subject of conversation between myself and the defendant. About three or four weeks before my marriage he told me that he would give me a lot for a bridal present, and that he wanted my husband to put up a fine house with my means, in case of any accident in his business; with my means for my benefit. The lot was west of the house in which my husband's father resided, and adjoining the house in which the defendant lived. It was the same lot or part of lot on which the house in controversy was subsequently built. He said at that time he did not want a small house, but a large, fine house built on it. I thanked him for it, and told him I was very glad that he had given it to me. I then told him that that would answer, but I preferred two small houses to one large one; he wanted
a large house, and before it finally decided whether I should
55 have two small houses or not, the large one was commenced.
I then expected to have, as one of the heirs of my father, about or nine thousand dollars. This conversation occurred in the old house porch. Mrs. Neale, Captain Neale, my husband, and myself were present. I mean by the porch of the old house, the house in which the defendant was then living. He afterwards told my ma. in my presence, that he had made me that nice present, saying, at the same time that he had no money to give me, but thought a lot would be better. After my marriage my husband built this house with my means.

Adjourned till to-morrow half-past eleven o'clock a. m.

FRIDAY, *Oct.* 13, 1865.

Met pursuant to adjournment, and Mr. Kennedy proceeded with examination of Mrs. Mary H. Neale.

I did frequently see the defendant there while the house was being built; he made no objection, whatever, to the house being built. I moved into the house immediately after it was finished; the defend-
ant made no objection to moving into the house, or taking
56 possession of it. After moving into the house, I continued to
occupy it about six months; at the expiration of that time my husband rented it for me to Mrs. Degges; the defendant knew that I rented the house to Mrs. Degges, and made no objection whatever. My husband generally received the rents for me; I received some.

In the spring of 1861 I went with my husband to pay a visit to Charles county; after my return I went to the house in question. I found occupying the house at that time the defendant and family. I made a claim to the house. I told them, Mr. and Mrs. Neale, that it was my house, and asked why they were there. He said they went there to protect it from the military, and thought it best for us all to live together. I objected to it, and told him that he was not able to live there and pay rent for it. I told him it would be better for him to go back into his own house and live there, as he had lived before. He said he thought we all had better live together. Mrs. Neale said to her husband that they had better go back to the old house, and live as they had before, and I am sure both of them did. I am almost sure both of them did.

Cross-examined.

By Mr. Morgan, counsel for defendant:

He said he was willing for the match about two or three
57 weeks before I was married. At the conversation on the porch
Captain Neale said he had given me a lot, and it was a very nice present, and he wanted my husband to put up a fine house on it in case accident in business. And his father then said, Ben., I have given your wife this lot, and I want you to put up a fine house on it. I do not remember any more at that time. This conversation was about three or four weeks before I was married, about the first of August. I do not remember who commenced this conversation.

1st interrogatory. Was your husband and Captain Neal on the porch when you arrived there?

Answer. Yes, sir.

2d interrogatory. Was the house and lot in question the subject of conversation when you arrived there?

Answer. Yes, sir.

3d interrogatory. Did yourself and husband leave there together?

Answer Yes; we did.

58 4th interrogatory. From the time you arrived at the porch,
until you left, were you with your husband all the time?

Answer. I was.

5th interrogatory. How much money had your husband of yours at the time the house was commenced?

Answer. I believe he had about eight or nine thousand dollars.

6th interrogatory. Do you know how much he had?

Answer. No.

7th interrogatory. Do you or do you not know whether the money was then invested into your husband's business?

Answer. No, sir; I do not know.

8th interrogatory. Had incurred before your marriage a considerable debt? and if so, how much?

Answer. No, sir.

59 9th interrogatory. Had you incurred any debt before your
marriage, which your husband, after your marriage, paid out of your money? and if so, how much?

Answer. He might have paid some few bills which my guardian omitted to pay.

10th interrogatory. How long after the house in question was built before you took possession of it?

Answer. I took possession as soon as it was built.

11th interrogatory. Was or was not the house in question vacant some months after Mrs. Deggs left it?

Answer. I was not here, and do not know.

12th interrogatory. In your examination-in-chief you stated that after you returned from Maryland you told your husband's parents that the house in question was yours, saying to them that they were not able to pay the rent. Now, state when this conversation took place, and who was present thereat.

Answer. It was in the house in question, Mrs. Neale and Captain Neal, defendant, my husband, and no one else that I remember.

13th interrogatory. What room in the house did this conversation take place in?

60 Answer. It was in the passage.

14th interrogatory. How long was it after your return before this conversation took place?

Answer. About a day or so.

15th interrogatory. Who commenced the conversation about the house?

Answer. I do not remember.

16th interrogatory. Why did you finally leave the house?

Answer. Because I did not care about living with the family; they were not agreeable.

17th interrogatory. Was there not differences between you and the family?

Answer. Yes, sir.

(Objected to by Mr. Kennedy for plaintiff.)

18th interrogatory. Did your husband inform you concerning the first bill as filed by Mr. Coxe for him against his father?

Answer. Yes, sir.

(Objected to by Mr. Kennedy.)

61 19th interrogatory. Did you ever see that bill?

Answer. I never saw it until the other day; her———

(Objected to by Mr. Kennedy.)

20th interrogatory. Was not the subject of that bill, before it was filed by Mr. Coxe, the theme of frequent conversation between you and your husband?

(Objected to by Mr. Kennedy.)

Answer. Yes, sir.

(Objected to by Mr. Kennedy.)

21st interrogatory. Were you not aware that a part if not the whole of your money was placed by your husband in this business?

Answer. No, sir; I know it was not; not to my knowledge.

22d interrogatory. After your marriage, did you go to Baltimore for the purpose of transfering your stocks to your husband? if so, how long was it after your marriage?

Answer. Yes, sir; I do not remember how long after my marriage.

23d interrogatory. Do you remember the amount of the stock?

Answer. I do not.

62 24th interrogatory. Did you understand at that time from your husband what disposition he was going to make of the proceeds of said stock?

Answer. He was going to build me a house with it.

25th interrogatory. Were you present after your marriage, at a conversation between your husband and his father, at his father's house, in which the defendant stated that he would give to your husband part of lot 16, in square 517, provided your money should not go into our husband's store, and that the defendant or Mr. Murray should disburse the money in building a house on said lot?

Answer. No, sir.

26th interrogatory. Do you or do you not know the fact that your husband for some time after your marriage, refused to build any house on any property belonging to his father.

Answer. No, sir.

MARY H. NEALE.

Sworn and subscribed before me this 13th day of October, 1865.

JOHN J. JOHNSON,
Special Commissioner.

63 *Compl't testimony—F. H. Hills.*

BENJAMIN J. NEALE & MARY H. NEALE, his wife,
vs.
JOHN E. NEALE.
} No. 412. Equity.

Examined.

By Mr. Kennedy:

Francis H. Hills, being duly sworn according to law, and says:

I reside in the city of Washington, and am acting assistant surgeon in the United States army. I know the parties to this suit, I know where the property is situated that forms the subject of controversy. I have known Captain Neale, the defendant, about twenty-five years. I am a little over thirty-seven years of age; had a conversation with the defendant; don't remember the date; at that time it did not particularly attract my attention. I was passing by the store and was invited in by Captain Neale. He told me that he supposed that I heard of the difficulty between himself and his son. I told him that I had heard nothing about it. He told me that he had taken the concern, the business as it stood, intending to pay the debts of the concern as far as he could out of the business; that his son owed him some two thousand dollars borrowed money; that he was holding on this house until the money could be paid for which
64 he was endorser, and when that was done he intended to

make the property over to Mrs. Neale, and her children, so that her husband could not use it; the house being built with her money. He spoke something, to the best of my recollection, about endorsing a note for Mr. Neale; about $1,200; the money was gotten from Mr. Shaw; that was a portion of the two thousand dollars that he claimed that Mr. Neale owed him. The whole of this conversation was in reference to what he said persons had charged him with attempting to defraud his son, and knowing that I was a relative of his son's wife he wished to set me right about the report, supposing that I had heard of them. He told me that he had given this son that property when he was married, and that he did not wish to keep it, and did not intend to keep it. He stated that it was very fortunate that he had not given him a deed for it at the time as his creditors would have seized on the property, and his wife and children would have nothing. He told me, moreover, that his son was drinking very hard. He said that he had given the lot that the house was built on.

Cross-examined.

By Mr. Morgan:

1st interrogatory. Can you fix the time of this conversation?

65 Answer. It was sometime after the failure. I understood that he was out of Washington and had gone to lower part of Maryland.

2d interrogatory. Who else was present at this conversation?

Answer. No one that I know of; possibly there might have been somebody behind the counter. The conversation took place in front of the counter.

Re-examined.

By Mr. Kennedy:

At the time of this conversation I had no knowledge where the plaintiff, B. J. Neale, was. What I have said with reference to his being in Maryland, I did not speak from knowledge but from information.

F. H. HILL.

Adjourned.

Sworn to and subscribed before me this 13th day of October, 1865.

JOHN J. JOHNSON,
Special Commissioner.

66 *Compl't testimony.—A. L. Newton.*

BENJAMIN J. NEALE & MARY H. NEALE, his wife,
vs.
JOHN E. NEALE.
No. 412. Equity.

DECEMBER 9TH, 1865.

A. L. Newton, being duly sworn according to law, deposed as follows:

Examined.

By Mr. Kennedy:

My name is A. L. Newton; I reside No. 355 Fifth street, between G & H streets, in the city of Washington; my present occupation is in the dry goods business, with Sears & Bro. No. 24 Market space. I have resided in Washington since 1839. I know the parties to this suit. I have known the defendant for 15 to 20 years; not intimately acquainted with him for that period, but have known him by sight. My relations with the defendant have been of a friendly character. I have visited his house by invitation. I know the house and lot in controversy, and its location very well; I have had frequent conversations with the defendant running back, at or about the time the defendant took charge of the stock, store and fixtures, said to be in the name of his son, B. J. Neale, situated on La. Avenue,
67 between 6th & 7th streets, and, about that time the first conversation occurred between the defendant and myself in relation to his business difficulties, which he represents as growing out of bad management, and intemperate habits of his son Ben., together with improper conduct on the part of Mr. Baruch Hall. On many occasions, subsequently to that, the defendant talked with me on the subject of his son's unfortunate condition. He seems to be in great anxiety about his son Ben. On other occasions the defendant told me that he gave that lot to his son's wife as a bridal present,for which he had not given a deed, but had intended to do so. That the house was built out of funds held in trust by Mr. Murray for Ben's wife. He referred to his son Benjamin, and the lot in question that he had given to his son's wife. He, the defendant, repeated the same thing half a dozen times in distinct conversation. I recollect the defendant saying,that Ben could not use the money himself invested
68 in the house, that Mr. Murray had so arranged that it could only be used in building the house.

Cross-examined

By Mr. Morgan,

The first time the defendant mentioned to me about giving this lot as a bridal present was either in front of the store or inside of the store. The other conversation I speak of occurred either going to church or coming from church, or on the street wherever we happened to meet. Cannot remember whether anybody was present or not.

Are you satisfied that you have repeated the defendant's precise words?

Answer. As far as memory serves the human intellect.

A. L. NEWTON.

Sworn to, and subscribed, before me this 9th day of December, 1865.

JNO. J. JOHNSON,
Special Commissioner.

69 *Compl' ts testi.—Janes Hume.*

Benjamin J. Neale & Mary H. Neale,
his wife,
vs.
John E. Neale.
} No. 412.—Equity.

Jane Humes, being sworn according to law, and testifies:

Examined.

By Mr. Kennedy:

I have resided in Washington since 1818. I am acquainted with the parties to this suit. I reside near the defendant's residence. My relations with the defendant's family have always been social; never had one word with the family but what was kind. I am acquainted with the house and lot in controversy; I see it every day. I had a conversation with the defendant about the house and lot in question about the time they commenced to build; just a few words. The defendant told me that he had not the ready money to give his son, but that he had given him the ground as a present. I do not remember anything further than I have stated.

70 *Cross-examined.*

By Mr. Morgan:

I do not remember when this conversation took place; somewhere, I think, about my door. I do not remember who introduced the conversation. Don't remember whether anybody else was present or not. This was all that passed between us.

JANE HUMES.

Sworn to and subscribed before me this 9th day of December, 1865.

JOHN J. JOHNSON,
Special Commissioner.

Compl' ts testimony.—Henrietta J. Kennedy.

Benjamin J. Neale & Mary H. Neale,
his wife,
vs.
John E. Neale.
} No. 412.—Equity.

Henrietta J. Kennedy, being duly sworn according to law, and deposes as follows:

Examined.

By Mr. Kennedy:

I live at the corner of 7th and I streets, in the city of Washington. I have lived in Washington about 35 years. I know the parties to this suit. I have known the defendant about fifteen years. My residence is near to that of the defendant's. I 71 lived on the corner of 7th and I streets about five or six years. My relations with defendant's family have always been of a social character. I have visited the defendant's family occasionally. I am acquainted with the house and lot in controversy. I never heard the defendant say anything about this property in question, but heard Mrs. Neale, in the defendant's presence, say that they had taken possession of Mrs. Mary Neale's house, as she was in the country at the time, to prevent it from being taken by the government for the use of the soldiers. We were all sitting on the porch together. I do not know whether the defendant heard this conversation or not. I suppose he did. There were no one present except my daughter. The Mrs. Neale here referred to was, and is, the wife of Benjamin J. Neale, and the house was the one now in controversy. This conversation took place either in the latter part of August or the first of September, in the year 1861, while Benjamin J. Neale and his wife were in Charles county, Md.

Not cross-examined by Mr. Morgan.

HENRIETTA J. KENNEDY.

Sworn to and subscribed before me this 9th day of December, 1865.

JOHN J. JOHNSON,
Special Commissioner.

72 *Compl'ts test'y.—Thos. L. Noyes.*

BENJAMIN J. NEALE & MARY H. NEALE, his wife, *vs.* JOHN E. NEALE. } No. 412. Equity.

Thomas L. Noyes, being duly (sworn) according to law, and deposes as follows:

Examined.

By Mr. Kennedy:

I live on H street, between 4th and 5th streets, in the city of Washington. I have resided there about fifteen years. I am acquainted with the parties to this suit. They lived next to me at that time. My relations with defendant have generally been social; during the time they lived next door the family constantly interchanged visits. I am perfectly acquainted with the house and lot in controversy. It is about fifty or sixty feet from my residence, on the same side of the street. The house was built on that lot about the year 1859. Sometime prior to the building of the house rumor became rife in the neighborhood that Benjamin Neale and Miss Mary Hamilton were to be married. About this time I met the defendant on the pavement, or in my house. I, of course, congratulated
73 him upon the prospect of his son's marriage, and the defendant replied, apparently with great joy, that it would be a

happy match, adding that she would bring to him ten thousand dollars; and I think it was at the same meeting, or one very early subsequent, that the defendant told me that he was about to give his son and daughter-in-law a lot of ground, and that he would take care that the money received by her should be expended in that way by erecting a house, it being his intention or determination that no part of that money should be invested in the store. There were several conversations relating to the matter between the defendant and myself, before and during the progress of the building. The first related to the obtaining of the right to use my party-wall, which I objected to giving without a consideration. Upon my refusal to grant that, the defendant determined not to give the complainants the lot adjoining my house; but gave them the lot upon which the house is now built, west of his own residence. The defendant said that he was building this house for his son Ben; that it was to be paid for out of the money his son received by his marriage, reiterating what he had formerly told me of his determination not to permit any of that money to be sunk in the store that was then carried on by his son. In all of those conversations he reiterated
74 the same declarations, and no other impression was left upon
my mind. After the house was first finished Mrs. Deggs, from Charles county, first occupied it. Upon reflection, I believe the complainants did, for a short time, occupy the house first after its completion, and that Mrs. Deggs succeeded the complainants in the occupancy of the house.

Cross-examined.

By Mr. Morgan:

I am on speaking terms with the defendant; within the last few weeks I had a difficulty with him. My wife does not visit the defendant's house. In the conversations with the defendant I cannot recall whether anybody else were present or not.

T. L. NOYES.

Sworn to and subscribed before me this 9th day of December, 1865.

JNO. J. JOHNSON,
Special Commissioner.

75 *Compl'ts test'y.—John Forrest.*

BENJAMIN J. NEALE & MARY H. NEALE,
his wife,
vs.
JOHN E. NEALE.
} No. 412. Equity.

Examined.

WEDNESDAY, *December* 13, 1865.

By Wm. B. Webb, counsel for complainants:

John Forrest, being duly sworn according to law, and says:
I know the parties to this suit. I have known the defendant about

16 or 17 years. I have had some three or four different conversations with the defendant; the first he said something about a lot that he was going to his son's wife. He said that he had married a young lady that was worth right smart; did not say how much, and that he, Benjamin J. Neale, was going to put up a very fine house. I do not know how long it was afterwards the house was on the way. I do not think it was quite a story. I met him, the defendant, he came out of the store, it was about dinner hour, he asked me if I would not go up and see young Ben's house. At another time I went up with young Neale from the store to look at the house; the painters had just got through; the roof was on the house. While I was up there the defendant, and also his
76 wife, came in the new house. The defendant, and also his
wife, made remarks to me, what a fine house Ben had put up. We then went through and looked at the conveniences of the water; how it was arranged through the house. After that I came down and stood there awhile in the parlor. The conversation then was that Ben. had put up too large a house for his small family. I have talked often with the defendant about the place, and do not now recollect the conversation. In the first conversation with the defendant he said he was going to give his son a lot close to the house. I should think a house like this, from the beginning of the war to the present time, would bring one thousand or twelve hundred dollars each year.

Cross-examined.

By E. C. Morgan, counsel for the defendant:

I have known the defendant about 16 or 17 years. At the time of these conversations I lived a great way from the defendant's house. I had nothing to do with the building of this house. I do not think there was anybody else present during these conversations, except the last time, when I came down in the parlor. Then, I think, the painter was present. I cannot give the dates of these conversations. I think the first conversation was in the
77 spring; cannot give the year that it occurred. The second
conversation was some smart months afterwards; cannot say the date, the month, or year. The last conversation was about winding up the house. The house was finished, except some little work about the mantel-piece. I am a mechanic. I have not worked at it for some time. I am now a huckster, or anything that I can make a dollar or two, and have been ten or twelve years. In the second conversation I met the defendant, and he asked me to go and see Ben's house. The last conversation, Ben, Captain Neale, the defendant, and his wife, were present, speaking about the house being too large for Ben's small family. The defendant said this.

JOHN FORREST.

Sworn to and subscribed before me this 13th day of December, 1865.

JNO. J. JOHNSON,
Special Commissioner.

78 *Compl'ts' test'y.—Edward Simms.*

Benjamin J. Neale and **Mary H. Neale**, his wife,
vs.
John E. Neale.
No. 412. Equity.

Examined.

By Wm. B. Webb, counsel for the complainants:

Edward Simms being duly sworn, and says: I know the parties to this suit very well. I know about the erection of a house on the west side of the defendant's residence very well. During the time I saw the house going up, I had a conversation with the defendant, when he stated to me that Mr. Dimmetry was passing by Ben's house, and that he admired it very much, and wanted to know if it would be for rent. The defendant replied to Mr. Dimmetry that it was not for rent, that it was Ben's house.

1st interrogatory. State whether you are acquainted with any transaction by which money was raised for the benefit of Benjamin J. Neale, during the erection of that house; and if so, state
79 it fully.

Answer. Stanislaus Murray and Benjamin J. Neale came to see me to cash a note of one thousand dollars, which was done. The note they represented to be the property of Mr. Neale. They said it was to be applied to the erection of the building being erected by Mr. Benjamin Neale.

(Mr. Morgan objected to the question and answer.)

I cannot remember any specific conversation with the defendant, except the one I have stated.

2nd interrogatory. Do you remember any other conversation except the one you have referred to especially, between yourself and the defendant, in which this house and the ownership of it was referred to? and if so, state what, in substance, the defendant said in relation to this house.

Answer. In answer to this, I have no recollection of any specific conversation in relation to the house. About the time of the erection of this house, I know the defendant's means were straightened.

80 *Cross-examined.*

By Mr. Morgan:

When Ben and Mr. Murray came to see me Mr. Murray commenced the conversation. I think the house was under roof, but not completed. I am not certain it was under roof. I do not know the season of the year. The defendant's circumstances were straightened about the time of the building of this house. I understood from the defendant that he was worth in property, real and personal, I do not know how much, but many thousand dollars.

He might have said this once, or a dozen of times. Upon this occasion the defendant stated what difficulty he had in raising a small loan.

EDW'D SIMMS.

Sworn to and subscribed before me this 13th day of December, 1865.

JNO. J. JOHNSON,
Special Commissioner.

81 *Compl'ts test'y.—Ann Hamilton.*

BENJAMIN J. NEALE and MARY H. NEALE, his wife,
vs.
JOHN E. NEALE.
} No. 412. Equity.

Examined.

By Wm. B. Webb, counsel for the complainants:

Ann Hamilton, being duly sworn according to law, and says: I know the parties to this suit. I am the mother of Mrs. Benjamin J Neale. About seven years ago the defendant came to my house and said his son was to be married to my daughter, and that he had no money to give my daughter as a bridal present, but he would give her the lot to build on. This was about three weeks before the marriage. He wanted my daughter to have a handsome house built on this lot. Nobody was present at this conversation, but myself and daughter. He remarked, if I did not think it was better to give her the lot as a bridal present, as he had no money to give her.

ANN L. HAMILTON.

Subscribed and sworn to before me this 13th day of December, 1865.

JNO. J. JOHNSON,
Special Commissioner.

82 *Compl'ts test'y.—E. Edmondston.*

BENJAMIN J. NEALE and MARY H. NEALE, his wife,
vs.
JOHN E. NEALE.
} No. 412. Equity.

Examined.

By Wm. B. Webb, counsel for the complainants:

Elijah Edmondston, duly sworn according to law, and says: I know these parties, Benjamin J. Neale and his wife, and John E. Neale. I was generally passing along H street, and on one occasion in passing, about the commencement of the building of this house, I had a conversation with the defendant. The defendant said his son was going to build a very fine house there. I replied to the defendant that this was most too large a house, in this neighborhood, at this time—

that I did not think it would pay. I said that I would advise you, or advise him, to build two houses instead of one. The defendant replied that it will cost him nothing for the lot, as I intend to make him, her, or them, I do not recollect which, a present of the lot. I do not
83 recollect any other conversation that occurred. In the same conversation I remarked that he had better build two houses, one for his son to live in, and the other to rent. The defendant replied that I have made him, her, or them, a present of the lot. My recollection now is that we had two conversations, one before the building of the house, and the last after the house had been commenced. I cannot remember the words of the conversation, but I think I state the substance. At the first conversation, it was about his son going to build a house, and that he, the defendant, had given them the lot. At the second conversation, after the house had been commenced, he, the defendant, spoke of the lot would not costing them anything, and that they might as well put up a fine house as not. I paid no particular attention to the conversation, as I did never expect to be called upon to testify in this case. The house would have rented about three to five hundred, until rents began to raise, about two years since, which it would rent for about fifteen hundred to two thousand dollars. I do not know whether it is finished or not. I judge from its exterior appearance.

E. EDMONDSTON.

Sworn to and subscribed before me the 14th day of December, 1865.

JNO. J. JOHNSON,
Special Commissioner.

84 *Compl'ts test'y.—Jas. W. Sears.*

BENJAMIN J. NEALE and MARY H. NEALE, his wife,
vs.
JOHN E. NEALE.
} No. 412. Equity.

Examined.

By Wm. B. Webb, counsel for the complainants:

James W. Sears, being duly sworn according to law, and says: I know the parties to this suit very well. I never had any conversation with the defendant with regard to the house on H street. When Mr. Neale was first married, we, that is Captain Neale and his wife, and Ben and his wife, were very intimate and social. I was present on several occasions when they had little parties, dances, &c. I only remember upon one or two occasions the defendant remarked to me that he had given them a lot; and to the best of my recollection, he indicated the lot upon which the house now stands. The house, at this conversation, had not been commenced, as I remember.

JAMES W. SEARS.

Sworn to and subscribed before me this 14 day of December, 1865.

JNO. J. JOHNSON,
Special Commissioner.

85 The complainants' counsel closed their case, with the understanding that the complainants would be allowed to examine Dr. Elliott and one other witness.

Compl'ts' test'y—Dr. J. Eliot.

BENJAMIN J. NEALE and MARY H. NEALE, his wife, *vs.* JOHN E. NEALE. } No. 412. Equity.

JANUARY 25*th*, 1866.

Dr. Johnson Elliott, being duly sworn according to law, and says:

Examined.

By Mr. Webb, counsel for the complainants:

I know the parties to this suit. I married the step-daughter of the defendant. I know there was a house erected next adjoining the former residence of John E. Neale. within seven or eight years; and since the marriage of Benjamin J. Neale and Mary H. Hamilton, complainants. I have heard it was erected by Ben. I. Neale, that is, with money he received by his wife. This I have heard from both complainants and defendant. In the erection of this house the defendant acted, I think, as general supervisor. I do not
86 know whether he was specially authorized or not. A short time after the marriage, in conversation with the defendant, he told me that he had given this lot to his son. From the repeated conversations with the defendant I have an impression so strong that I am willing to testify to it as a fact, that the house was erected with money that Benjamin I. Neale received from his wife. These conversations took place before the ground was broken and while the house was under erection. I advised Ben and spoke to a builder about what sort of a house to erect. I cannot say whether the defendant was present or not at these conversations with Benjamin I. Neale. John E. Neale lives in this house at present. The house and lot in which I refer is the one now in controversy in this suit between the complainants and defendant. I am a practising physician in this city. I have been demonstrator and professor of the medical colleges of this city since 1844.

Cross-examined.

By Mr. Morgan, for defendant:

Before the ground was broken, and while the house was
87 being built, I understood it was to be built, and was being erected with Mrs. Neale's money, one of the complainants to this suit.

1st interrogatory. You have stated that the defendant, you suppose, supervised the building of the house; what reasons have you for supposing so?

Answer. From repeated conversations with the defendant on this subject while the house was in process of erection.

J. ELIOT.

Sworn to and subscribed before me this 25th day of January. 1866.

J. J. JOHNSON,
Special Commissioner.

Compl'ts' test'y—Mary, Rider.

BENJAMIN I. NEALE and MARY H. NEALE, his wife,
vs.
JOHN E. NEALE.
No. 412. Equity.

Mary Rider being duly sworn according to law, and says:

Examined.

By Mr. Kennedy, for complainants:

I think I have lived in Washington city about nine years. I know the complainants and defendant to this suit. I have lived
88 with the complainants as servant. I went to live with the complainants about the commencement of the war, and lived about two months with them before they went to the country. When the complainants left the city they left me in full charge of the house in which they then lived, and not the house in question. While the complainants were in the country John E. Neale, the defendant, came to me one morning and told me he was going to move the furniture out of this house into the complainant's, or Mary H. Neale's house. He, the defendant, did remove the furniture at that time, and I helped him to remove it, and it was carried into Mary H. Neale's, or the complainant's house, being the one now in controversy. The complainants were still in the country; they had not returned to the city. I lived with the defendant one week after this, then I quit the service. The week I lived with the defendant he lived in his own house—the one adjoining the new house, the one in controversy. Before and after the defendant moved the furniture into the new house I heard the defendant say that Mary H. Neale, one of the com-

plainants, built this house, and that he, the defendant, had given her
the lot to build the house on. The first time I heard the
89 defendant use this conversation was while I was in charge of
the house which the complainants rented, and at that house;
and afterwards at his own house he used the same conversation. At the first conversation, at the house in which I was in charge of, the defendant had this conversation with me there were no one else present. At the second conversation, the week while I lived with the defendant, occurred at his house, there were no one present except the defendant, his wife, and servant Hennie.

Cross-examined.

By Mr. Morgan, for defendant:

I was a slave at the time I lived with the complainants. I do not know exactly my age; I suppose I am over fifty years of age.

1st interrogatory. Do you know why the defendant removed the furniture?

Answer. No, sir.

2d interrogatory. Did the landlord distrain for rent due by Benjamin J. Neal?

(Objected to by Mr. Webb, counsel for complainants.)

Answer. He did not distrain as I know of. The morning the
90 defendant was moving out the furniture the landlord came and
asked the defendant what he was moving the furniture out
for; the defendant replied that he thought it was better in Mary H. Neale's own house.

3d interrogatory. Has anybody spoken to you concerning what you were to swear to in this case?

Answer. No, sir.

3d interrogatory. Has not Mr. and Mrs. Neale, the complainants, spoken to you concerning what you were to swear to in this case?

Answer. No, sir.

4th interrogatory. Where do you live now, and with whom?

Answer. I live on Eighth street between L and M streets. I live by myself.

her
MARY × RIDER.
mark.

Sworn to and witnessed before me this 25th day of January, 1866.

J. J. JOHNSON,
Special Commissioner.

The complainants here rested their case, with the understanding that the complainants, through their counsel, reserved the right to introduce rebutting testimony.

91 DISTRICT OF COLUMBIA,
County of Washington, ss:

I, John J. Johnson, special examiner in chancery, do hereby certify that, in pursuance of the annexed notice, the foregoing depositions taken down and by me reduced to writing in the presence of, and from the statement of, the witnessess at the time and place designated in the caption thereof, and were then and there by me read over to the witnesses, and by them subscribed in my presence, and in the presence of the solicitors of the respective parties, who were then and there attending, the witnesses having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters at issue in said cause. I further certify that I am not of counsel for any of the parties to said case or in any manner interested therein.

J. J. JOHNSON,
Special Examiner.

92 In the Supreme Court of the District of Columbia.

For defendants.

B. J. NEALE and MARY H. NEALE, his wife,
vs.
JOHN E. NEALE.
} No. 412. In chancery.

DISTRICT OF COLUMBIA, *County of Washington, ss:*

Be it remembered, that on this thirty-first day of January, in the year of our Lord one thousand eight hundred and sixty-six, I, John J. Johnson, special examiner in chancery, did cause to be personally present, at the office of Messrs. Kennedy & Webb, law building, in the city of Washington, in said District, John E. Neale, Mary E. Neale, Julia V. Neale, T. H. Baun, W. J. Donoho, Glavina A. Anderson, Wm. Dant, Charles Keenan, and Dr. J. J. Ellot, to testify on the part and behalf of the defendant in a certain cause now depending in the Supreme Court of the District of Columbia, wherein B. J. Neale and Mary H. Neale are complainants and John E. Neale is defendant.

93 *Def't's test'y.—John E. Neale for defendants.*

BENJAMIN J. NEALE AND MARY H. NEALE,
his wife,
vs.
JOHN E. NEALE.
} Equity, 412.

John E. Neale, the defendant, being duly sworn according to law, and says:

Examined.

Mr. Morgan, counsel for defendant:

I am defendant in this cause. I reside in Washington city, on H street, No. 566. I have been residing in Washington city about twenty-nine years; I am sixty-one years of age. I was aware of my son's (Benjamin J. Neale) marriage, but was opposed to it; also my family, except Mrs. Neale, my wife. The approaching marriage was not spoken of to me. I frequently heard it spoken of by the children. Benjamin J. Neale never consulted me about his marriage before his marriage. I now state my objection to his marriage.

(Objected to by Mr. Kennedy as regards this statement; also what the defendant would have done if he had been consulted.)

That when Mrs. Hamilton moved up to Washington, from what I have heard of her reputation, she having married her sister's
94 husband, which was a very unpopular thing with me. Besides, there is one other objection, which I will not name here.

I agreed to give my son, Benjamin J. Neale, a lot, No. 16, in square 517, upon conditions that I was to disburse the money or Stanislaus Murray. The offer of this lot was made to him immediately after he had received about three thousand dollars from John Hamilton in stocks. The complainants went from my house to Baltimore for the purpose of having it transferred to Benjamin J. Neale. The day before they started to Baltimore my wife and daughters talked to Mary H. Neale; my wife and myself talked with Mary H. Neale, and told her that she ought not to give her property to Ben., because it would go in the store and be lost. She, Mary H. Neale, replied that she gave herself to her husband, and she would give him her money. This was in October or November, 1858. It was after the complainants returned from Baltimore that I offered my son this lot, to prevent him from using the money in his wife's guardian's hands, Mr. Murray, from carrying into the store, which he refused emphatically at that time—I mean the lot—saying he did not want to own any property in Washington; saying if a house wall all he would have to leave his wife, he would cut his throat. About four months after-
95 wards the complainant, Ben., came to me, and said he would accept this lot, No. 16, in square 517, upon the conditions that I had offered. I then asked him who was to build the house, Maury or myself. This was the condition or proposition. He said farther, I do not want Mr. Maury to have anything to do with it; I want you to disburse the money. I then employed T. H. Barron, carpenter, to draw a draft of the house, which he did. I showed it to Ben, and his wife, Mary H. Neale; they highly approved of it. I then told Barron to draw up the specifications for the building of the house, which he did. He never brought the specifications to me, but left them at B. J. Neale's store. The complainant employed Bird & Bro. without my knowledge. B. J. Neale then came up and urged me to give him lot 18, in square 517, in lieu of lot 16, in same square, the day before the house was commenced. I objected at first to his having lot 18; so did all my family, in consequence of it darkening and ruining the house I lived in. I, notwithstanding, consented to let him have lot 18 under the same conditions, namely, that Maury or myself were to disburse the money out of the funds then in Maury's hands. Ben. added that I was to disburse the money in Maury's hands.

1st interrogatory. Was there any condition or understand-
96 ing about the money of Mary H. Neale, one of the complain-
ants, going in the store of B. J. Neale, her husband.

(Objected to by Mr. Kennedy, counsel for complainants.)

Answer. The very sum and substance of the whole matter was to
keep the money from going into the store. The next day after lot
18 was given the house was commenced; I mean part of lot 18.
This was given to B. J. Neale. Samuel T. Morsell superintended the
building of the house in question. I never superintended the
building of the house, because it was taken out of my hands. I was
not allowed to disburse the money; it was taken out of my hands
before the building was commenced. After I had employed Barron
to draw the draft and specifications of the house I told him to bring
the specifications to me, and if he was as low as anybody else I
would give him the house to build; I wanted to give it to him. He
left them at P. J. Neale's store, and never handed them to me at all.
B. J. Neale made a contract with Bird & Brother instead of Barron.
I never in the world aggreed to give this lot to Mary H. Neale,
one of the complainants; I never, to my knowledge, in
97 any conversation after the marriage of Mary H. Neale, one
of the complainants, acknowledged or spoke of giving her this
lot; and I know I never spoke before her marriage of giving her this
lot. After their marriage I was not anxious that a house should be
built, only on account of saving the money from going into the store.
I made an objection when the house was two feet above the surface
of the earth. B. J. Neale came to me with tears in his eyes and
said he would be constrained to sell the brick and mortar as it stood;
he said he was not able to finish the house. I asked him why he did
not let me build the house agreeably to the contract, and if I had had
the disbursing of the money the house would have been built. I then
asked him what had become of his wife's money in Murray's hands.
He said he did not get near money enough from Murray to build the
house. He said that he had to pay large bills, upwards of two thou-
sand dollars, for his wife, which he had to pay out of the money which
he got from Murray. I told him at the time that I should never
98 give him a deed for the part of lot in question. I then told
him the reason he did not want lot 16, that lot being under
mortgage to Murray for money, and he, B. J. Neale, borrowed that
money, with a promise that he, B. J. Neale, would take it up when-
ever Murray wanted the money. Whenever the money was wanted I
had to sell the very same lot, 16, to lift the deed of trust on it, to
settle with Murray's administrators. B. J. Neale failed to take it up.
I borrowed the money and gave the deed of trust to Murray on the
lot 16. I heard it from Ben that the house in question cost forty-
five hundred dollars. This house is not [not] finished; there is no
railing around the front steps; the basement is mere cellar walls; the
cellar is constantly full of water; I may speak a little extravagant, but
at times from one foot and a half to two feet of water. The walls of
the gable end of third story is cracked, blacked, and constantly leak.
This has been so now since I have been there. The roof was not
painted.

(Mr. Kennedy objected to this testimony as regards the finishing of the house.)

99 Immediately after I went into the house I put improvements on the house. I introduced the waters, put up a cooking range; I put a sink in to carry off slop-water; I also put in a force-pump to pump the water out of the cellars; I could not get to my coal without wading. Neither of the complainants ever objected to me about my occupying the house. The improvements which I have spoken were put there because they were necessary. Neither of the complainants ever requested me to make any of the improvements. There was no specified number of feet or portion of this lot given to build this house on; I give him the part of lot 18 to build the house on. There never was anything said between myself and the complainants concerning the building of two small houses on this lot. When Ben left this city to go to Maryland he was living in a house on H street, rented from Moore. Ben went off down in the country in April, 1861; got alarmed, fearing the town would be burned down by the rebels. After he got ready he was in such a hurry to go away he left his clothes behind. He came up after his clothes; he then requested me topay off this woman and discharge her; I mean the cook woman that was in charge of his house. He asked me to pack up his things and leave them
100 in the house. I paid the woman as soon as her month was up and discharged her. As soon as I discharged the woman I packed up the goods and removed them into the new house, the house in question. I removed the goods, because I thought the goods would be more secure in consequence of fire, it being a vacated house. When Mr. Moore found I was going remove the goods he levied upon them for rent, and I had to relieve the levy before I could get the goods. Ben. J. Neale and Mary H. Neale, his wife, returned from Maryland about the 21st of July, 1861; they had one child and one nurse. They came to my house; I was in the new house. They remained there, and in February, 1862, Ben. was sent to the asylum, where he remained eight or nine months. During the time Ben. was at the asylum his family resided in my house, with the exception of the time his wife was confirmed at her mother's house. His family came back to my house before Ben came from the asylum, and when Ben came from the asylum he came to my house. He and his family, after his return, stayed at my house about six weeks; he then left, moving everything he had in the house away. I tried to stop him from leaving. He nor his family never pay me any board. I procured a situation for Ben. after he left the Insane asylum at Colleys.

Adjourned till Friday morning, the 2d February, at Mr. Kennedy's office.

101 FRIDAY, *February 2d*, 1866.

Met pursuant to adjournment, and the examination-in-chief of John E. Neale, defendant, resumed.

2d interrogatory. What was the condition of your son during the whole or part of the time that he and his family stayed in your house?

(Objected to by Mr. Kennedy, counsel for complainants.)

Answer. His condition was, up to the time of his going to the Insane hospital, he, and his wife, Mary H. Neale, was very abusive. He drank then, and I was trying to reform him, and I believe I could if it had not been for his wife. His conduct was pretty bad; I had a great deal of trouble with him; I used to watch him in the street. He assaulted his mother and tried to put her out of the window. I do not know whether he had the mania or not; he had been drinking. He ran away from us one time. I had to sit up with him five nights in the house in which I live; he was partially deranged at times, and then he would have his senses. Whiskey was the cause of his derangement. He came down to his breakfast one morning apparently just as well as I am, ran out in the street, and ran a square
before I could catch him. He was partially dressed, with a
102 blanket around him, shoes off, and snow on the ground. I
and other persons took him back. I had a doctor attending
him. I am speking now before he went to the asylum. I employed two persons to sit up with him for five nights, on this occasion nearly all the time. It then became necessary to send him to the hospital. I then sent him to the Capitol Hill hospital, which was. the nearest one, and paid his expenses there in advance. The next day he became so obstropulous they could not take care of him. He ran in the guard-house on the Island, where I found him, with shoes off, and mud up to his knees. Dr. Eliot and my son, Francis D. Neale, went with me to the guard-house, and found Ben there. He had on his best cloths, without shoes, and up to his knees in mud. I had to buy him a pair of shoes, and took him back to the hospital; an officer was with us; I think he had the mania on him at that time.
All of us took him back to the guard-house and left him
103 him there all night. In the morning Dr. Eliot and myself
went to the guard-house and took him to the Insane hospital,
over the Eastern Branch. I do not remember whether any by went with us to the hospital or not. I do not remember any other occasion of the mania, any other extraordinary trouble with him while he was in my house. He attempted two or three times to jump out of the window of my house, but I prevented him. I had to watch him all night and all day. Ben. was at the insane asylum nearly nine months. I paid the bills at the asylum, person, hack hire, &c. I bought all his clothing, and furnished segars and tobacco for him while he was at the asylum. I knew he wanted some kind of stimulents. All this happened after the assignment of B. J. Neale's stock of goods. When Ben. came from the asylum he came to my house.

(All the answer that follows the last question is objected to by the counsel for the complainants.)

Before Ben.'s marriage I never had any conversation with him when Mary H. Neale was present in relation to putting up the house in question, or any house. While the house was going up I fre-

quently told Ben. that I never would give him a deed, and I think I said so to his wife. I know I said so to his wife. These con-
104 versations occurred in consequence of Ben's forfeiting his first contract, in not allowing Mr. Maury or myself to disburse the money. During the erection of this house, I borrowed money from Mrs. Sears, and a mortgage given upon the property, to the amount of two thousand and eight dollars, with interest. This money was borrowed for the purpose of building this house. This was the agreement as understood between Ben. and myself. I paid this money sometime afterwards, with interest, over four hundred dollars. When this money was borrowed the house was up above the first story, and near the second story, as well as I remember. Ben. came round, with tears in his eyes. I remember that pretty well. He wanted to sell the brick and mortar, just as it stood; that he was not able to carry the work on any longer. My wife said to him, you want to swindle your father out of this lot. Ben. replied that he did not get money enough from Mr. Maury to finish the house, and that he had bills to pay for his wife, over two thousand dollars. But, after this, the house went on. I told him that if he had let me, according to his contract, to disburse the money that was in Maury's hands, that the house would have been built without any difficulty; and that I never would give him a [a] deed for it. There was a cessation in the building of the house; I do not know how long; a
105 short time, though. When Ben. and his family came back from the country they came to live with me. Mary H. Neale, his wife, never claimed the house as her's, or ask me why I was in it, nor did she, while I was present, make any such claims to my wife. I had not any conversation, after their return, with Ben. or his wife about my occupancy or ownership thereof. I never in the world said to Mary H. Neale, or in her presence, that I had given her a lot, and that it was a very nice present, and that I wanted her husband to put up a fine house on it, or any words to that effect. I never in the world had any conversation with Mary H. Neale, or in her presence, about giving her a lot to put a house on, to guard against accidents that might result from her husband's failure in business. This was before her marriage. When the complainants returned from Maryland, and came to the house in which I lived, she did not claim the house, and say that I was not able to pay rent for it.

Adjourned till to-morrow morning at ten o'clock, at Mr. Kennedy's office.

Met pursuant to adjournment, and resumed the examination of John E. Neale.

106 My son kept store there, and failed in business. He made an assignment to me. The house at this time was up; but I was not living in the house then.

3rd interrogatory. When your son made the assignment or bill of sale to you of the goods in his store, did you aggree first to pay the two thousand and eight dollars, the Sears mortgage, out of the proceeds of the goods assigned, and then to pay the balance of your son's confidential debts?

Answer. No, sir; I never at any time aggreed to do it.

4th interrogatory. State if you know the amount of the confidential debts of your son at the time of his failure; and if you do know, state how you do know it.

Answer. I do know it, from the fact of its having been set down in William E. Hamilton's (his clerk's) handwriting, who is his brother-in-law; in Ben. Neale's own book of accounts. This was after the assignment. Witness corrects himself, and says it was before the assignment. The amount is thirteen thousand two hundred
107 and two dollars and eighty-one cents.

(Objected to by Mr. Kennedy, counsel for complainants.)

5th interrogatory. At the time of the bill of sale or assignment of your son's goods to you, were the entries in the book that you have just spoken of then on the book, or not?

Answer. Yes.

6th interrogatory. Do you or do you not know when these entries were made?

Answer. Just before the bill of sale was made.

7th interrogatory. Did your son, Ben. J. Neale, the complainant, and yourself ever look over these entries together?

Answer. Yes, I think I did. It was after the bill of sale was given.

8th interrogatory. Did he then, or not, acknowledge these entries to be right?

Answer. Yes, he did.

9th interrogatory. What was the amount that you realized from judgments, notes, and accounts assigned to you by your son when he failed in business?

(Objected to by Mr. Kennedy.)

Answer. Four thousand dollars.

108 10th interrogatory. What was the stock in trade assigned to you by your son, Benjamin, appraised at when he failed?

(Objected to by Mr. Kennedy.)

Answer. Six thousand eight hundred and eighty-six dollars.

11th interrogatory. Did you use all reasonable dilligence in collecting the judgments, notes, and accounts transfered to you by your son?

(Objected to by Mr. Kennedy.)

Answer. I did.

12th interrogatory. Can you state the ammount of confidential debts of your son's that you were either endorser for or responsible for at the time of his failure?

(Objected to by Mr. Kennedy.)

Answer. I was indorser for Shaw's note, thirty-four hundred dollars; Corcoran, nine hundred and seventy-five dollars; two or three little judgments, which I , in all about one hundred dollars; Mrs. Sears, two thousand and eight dollars.

13th interrogatory. What was the amount of your son's debts at the time of his failure, as indicated by his books, which were
109 not marked confidential? Please look at his books, which you now have before you, before you answer.

(Objected to by Mr. Kennedy.)

Answer. Thirteen thousand three hundred and fifty-five dollars and sixty-eight cents.

14th interogatory. Was the note which was given to Mrs. Sears (already spoken of) paid out of the proceeds of the goods transferred to you by your son?

Answer. No, sir.

15th interrogatory. Was it paid out of collections made by you out of the transfer of judgments, notes, and accounts made to you by your son?

Answer. No. I paid it out of my private fund. There was some little account by Mrs. Sears made at the store, after the assignment, which was credited on the note of two thousand and eight dollars.

110 16th interrogatory. Was your son largely indebted to you when he failed?

Answer. He was.

Examination-in-chief here closed.

Cross Examined.

By Mr. Kennedy for complainants:

1st interrogatory. Tell us, if you please, what was the amount of the indebtedness to Mr. Stanislaus Maury, which was also secured by deed of trust on lot 16 in square 517.

Answer. Five hundred dollars.

2d interrogatory. State, if you please, if the debt was evidenced by a note.

Answer. It was. The note was given in 1855. Mr. Maury had this money in his hands at the time, belonging to an orphan boy, which he prevailed upon me to take at a long interest.

3d interrogatory. Look at the book of which you have been speaking, and see the amount of the debts due to Ben Neale at the time of the assignment.

111 Answer. The amount of judgments, notes, accounts, &c., which were considered good upon the books at the time of the assignment, amounted to thirteen thousand five hundred and nine dollars and ninety-eight cents.

4th interrogatory. What was the aggregate amount of the other debts which were considered doubtful at the time of the assignment?

Answer. So far as I see the books do not show any debts marked doubtful. The books show claims marked bad to the amount of five thousand nine hundred and sixty-four dollars and forty-one cents.

5th interrogatory. From the same books, state the amount of stock assigned to you at the same time.

Answer. Six thousand eight hundred and eighty dollars and eighty-three cents.

6th interrogatory. State, if you please, when the assignment was made to you, were the books delivered to you.

Answer. Yes, sir.

112 7th interrogatory. Were the entries making the showings of

indebtedness of the stock on the books at the time they were delivered to you?

Answer. Yes, sir.

8th interrogatory. Have the books been in your possession ever since they were originally delivered to you?

Answer. They have.

9th interrogatory. You have said that at the time of the assignment your son was largely indebted to you. Please look at the books and see the condition of the accounts as shown between you and your son by his books at the time they were delivered to you under the assignment.

Answer. At the time of the assignment the books show, as kept by Ben J. Neale, or his book-keeper, the amount of twenty-three hundred and sixty-nine dollars and sixty-five cents appeared against me. After the books came into my possession the subsequent entries on said account appear to be in my handwriting, Ledger "B."

113 10th interrogatory. State, if you please, whether at the time of the assignment of which you have spoken, and in consideration thereof, you made and passed to him any promissory notes of your own; and if so, state the number of notes and their aggregate amounts.

Answer. Yes, sir; I gave these notes because my son was largely indebted to me. After we had a settlement these notes were given up and cancelled. There were four notes, three thousand dollars each; twelve thousand in all.

11th interrogatory. Did you ever pay the amount of these notes in money or any part thereof?

Answer. These notes were surrendered to me for indebtedness to me by my son.

12th interrogatory. State when and where that settlement of which you speak took place, and who was present.

Answer. The settlement took place down at the store on Louisiana avenue. No one was present; it was a private settlement. It was in the neighborhood of 1861.

13th interrogatory. Did you pay him, at that settlement, any money?

Answer. I did not.

114 14th interrogatory. If, as you claim, at the time of the settlement your son owed you twelve thousand dollars or more, as you alleged, please state what evidence you have of that fact.

Answer. I have neither my book accounts here, but will produce the books.

Adjourned till Friday next at 10 o'clock, the 9th of February.

Met pursuant to adjournment, at Mr. Kennedy's office in the law building, and the cross-examination of John E. Neale, the defendant, was resumed, who deposeth and saith:

At the time of the assignment, the book was delivered to me and has been either in my possession or the possession of J. Carroll Brent, one of my counsel, ever since. The witness here produces the Maury note, marked Exhibit "A," and herewith filed.

15th interrogatory. I want you Mr. Neale, look at the book which you have produced containing the account against B. J. Neale, and from that book tell the commissioner what was the amount of your claim?

Answer. The book shows the amount of nine thousand seven hundred and fifty-eight dollars and fifty three cents.

115 16th. I want you to look at this book marked Exhibit B, on pages 143 and 144, and say when those entries were made.

Answer. The entries on page 143 I cannot remember the precise time, but they were made since the assignment and settlement of 1861. On page 144, those entries were also made since the assignment.

17th interrogatory. I now call your attention to page 141, and ask you to tell when those entries were made?

Answer. Those entries were made as therein dated. The entries on page 142 were made of their dates, as on the book stated, down to the entry of May, 1855; the balance of the entries were made since that time.

18th interrogatory. Look at the book again, and see if all those entries in the book on pages 141, 142, 143, and 144 are in your handwriting, being entries including your claim against B. I. Neale?

Answer. They are all in my handwriting.

19th interrogatory. Has this account ever been posted in any other book?

Answer. This is the only book of entries I have. This is
116 my own private book. I do not remember whether this account has been posted in any other book or not.

20th interrogatory. Look at the book and see if it has ever been posted in any other book?

Answer. I have looked at Ledger "C," the only book I have present, and can find no transfer there.

21st interrogatory. Look at book marked Exhibit B, and tell the commissioner whether it contains any entry in relation to the promissory notes which you have admitted that you passed to B. I. Neale at the time he assigned his stock in trade and delivered his books and other choses in action to you, in pursuance of said assignment, and which said notes, you have alleged, were surrendered by said B. I. Neale to you for cancellation on your settlement with him in 1861, and especially whether this book, Exhibit "B," shows any debit against you by reason of your giving those notes, or any credit to B. I. Neale by reason of his surrender of the same to you for cancellation, a alleged by you?

Answer. The book does not show any entry in relation to those notes. I find in the book, among the confidential debts, the name of M. H. Neale, which is intended to be for Mary H. Neale, one of the complainants. This is my son's book, and being the same book which I introduced the other day containing the list of confidential debts. The amount put down on this book as confidential to Mary H.
Neale is two thousand and eight dollars. The confidential
117 debt on the book as due to Mary H. Neale is the same debt

as that one paid Mrs. Sears. The debt here is two thousand and eight dollars. The name of Mrs. Sears does not appear on the list of confidential debts due from B. I. Neale. The name of Mrs. Sears does not appear on either list, as confidential or non-confidential. I do not remember whether any one was present at the time the books were passed to me by my son and when the assignment was made. This assignment was made and closed at the store on Louisiana avenue. I do not remember whether Hamilton Williams or Wm. E. Hamilton were present or not.

22d interrogatory. At the time, or immediately before, and at the store, either the assignment was made, or whilst the matter was in negotiation, was your attention particularly drawn to the confidential debt of two thousand and eight dollars due to Mary H. Neale, and representing the Sears debt, of which you have spoken, by B. J. Neale, one of the complainants in this cause, in the presence of Hamilton Williams and Wm. E. Hamilton, or either of them, and with instructions given you to pay said debt first out of the proceeds of the stocks, &c., assigned to you; and did you not, your attention been so drawn in the presence of them, or one of them, promise to pay this debt first out of said proceeds?

118 Answer. No, sir. I do not remember their being present on any such occasion, and I know I never promised priority of that debt over any other. At the time the house in question was being built, and during the whole time, I lived next door. I was in the building during its erection at various times. After the house was built Ben. Neale and family were the first persons that moved in this house, and lived there a month or two at the solicitations of my wife, Mrs. Neale, to cure their sick child. From there they moved to Moore's, Mrs. Deggs next moved in at the solicitation of my daughter, Glovina Neale, who went to Georgetown for that purpose.

(Mr. Kennedy objects to the latter clause of this answer.)

The complainant never paid me any rent whilst he occupied this house. I never asked him for any, he being my son. Mrs. Deggs was owing B. I. Neale a bill for groceries, and the rent was settled in that way. I do not remember whether Mrs. Deggs recognized me as landlord or paid me rent.

Adjourned till to-morrow morning, Feb. 9, 1866.

Met pursuant to adjournment at the office of Messrs. Kennedy & Webb, Law Building, and the cross-examination of John E. Neale resumed.

I moved into the house now in controversy in June or July, 1861.

119 The complainant's were then in Charles county, Md. I found the furniture of the complainant's in Mrs. Moore's house on H street, and I took it and moved it into the house in controversy. There was a woman at Moore's house, and she had charge of the furniture. I never told this woman when I took the furniture that I was going to move it into Mary H. Neale's house, but I told her that I was going to move it to the new house. I never told Mary Rider,

or said in her presence that Mary H. Neale had built the house, or that I had given her the lot. I have continued to occupy the house in controversy from the time I moved into it in 1861, down to the present time. I have never paid these complainants, or either of them, any rent during the time I have occupied this house. I never said to Mrs. Jane Hamilton, or in the presence of her daughter, Mary H. Neale, one of the complainant's, that I had no money to give her daughter a bridal present, but that I would give her a lot to built a house on, or words to that effect. I never within three weeks before marriage, or at any other time before marriage, told Mrs. Ann Hamilton that I wanted her daughter to have a handsome house built on the lot which I was to give her. I never asked Mrs. Hamilton's opinion whether it was not better to give her daughter this lot as a bridal present, or words to that effect. I was present
120 when Dr. Hill was sworn as a witness in this case. I have no recollection of any such conversation with Dr. Hill that I intended to make over this property to Mary H. Neale; that the house was built with her money. I never told Dr. Hills that I had given the property in question to my son at the time of his marriage, and that I did not wish to keep it, and that I did not intend to keep it, and that it was fortunate that I did not give him a deed for it because his creditors would take it. I was present when A. L. Newton was sworn and testified as a witness in behalf of the complainants. I have no remembrance of having at any time told Mr. Newton that I had given to my son's wife, Mary H. Neale, one of the complainants, the lot in question as a bridat present, which Mary H. Neale, one of the complainants, the lot in question as a bridal present, which I had not given a deed, but intended to so, and that the house in controversy was built out of funds held in trust by Mr. Murray for the complainant's wife, Mary H. Neale, or words to that effect. I was also present when Jane Humes testified as a witness before the commissioner. I have no recollection of telling Jane Humes, at the time of the commencement of the house in controversy, or a few weeks before, that I had no ready money to give my son, but I had
121 given him the ground as a present, or words to that effect. I was also present when Henrietta J. Kennedy testified in this cause. I do not remember any such conversation with Henrietta J. Kennedy in August or September, 1861; that Mrs. Neale, my wife, in my presence, said that they had taken possession of Mrs. Mary Neale's house, one of the complainants, as she was in the country at the time, or words to that effect. I was also present when Thomas L. Noyes was sworn in behalf of the complainants.

23rd interrogatory. State if you did not meet Thomas L. Noyes a short time before the marriage of the complainant, and upon his congratulating you upon the prospects of your son's marriage, you did not thereupon say to him that it would be a happy match, and added that she, meaning Mary H. Neale, one of the complainants, wife of B. I. Neale, would bring some ten thousand dollars; and whether you did not at that interview, or one that occurred very early after, also tell the said Noyes that you were about to give your son and daughter-in-law a lot of ground, and that you would take care that the money received by her should be expended in the erection of a house thereon, or words to that effect?

122 Answer. I do not remember any such conversation. I feel assured that no such conversation ever occurred. I was also present when John Forrest was examined on behalf of the complainant.

The deposition of John Forrest was here read to witness as to his conversations with Forrest; and thereupon the witness is asked by counsel for the complainants to state whether the conversations between witnesses and Forrest as the same have been deposed to by Forrest. The witness says I can safely say that no such conversations occurred on the subject. I was also present when Edward Simms was examined for complainants.

24th interrogatory. State whether, in a conversation between you and Edward Semmes, that a Mr. Dimmitry was passing by Bens house, meaning the house in question, and that he, Dimmitry, admired the house very much and wanted to know if it would be for rent, and that he was told in reply by you that it was Bens house, or words to that effect.

Answer. I do not remember. I was also present when Elijah Edmondston was sworn on behalf of the complainants.

The deposition of Elijah Edmondston was here read to witness
123 as to his conversations with Edmondston; and thereupon the witness is asked by counsel for the complainants to state whether the conversations occurred between him and Edmondston as the same have been deposed to by Edmondston. The witness, answering, says: Not to my recollection. I was also present when James W. Sears testified in behalf of the complainants before the commissioner.

25th interrogatory. State whether before the house in controversy was commenced, you did not on one or two occasions remark to said Sears that you had given them, meaning the complainants, a lot, and indicate to said Sears as the lot so given, the lot upon which the house in controversy now stands.

Answer. I have no recollection of any such conversation. I was not present when Dr. Johnson Eliot testified in this cause.

26th interrogatory. State whether Dr. Johnson Eliot is any connection of your family; and if so, state what connection he bears to your wife.

Answer. He married my step-daughter, the daughter of my wife by her former husband.

124 27th interrogatory. State whether you did not tell Dr. Eliot that the house in controversy was erected with money belonging to Mary H. Neale, received by her husband after his marriage, or words to that effect?

Answer. I do not remember any such conversation with Dr. Eliot.

28th interrogatory. State whether a short time after the marriage, and before the ground was broken to build the house, you did not in a conversation with Dr. Eliot tell him that you had given the lot in controversy to your son.

Answer. I do not remember of having told him any such thing.

Cross-examination here closed.

Adjourned till Monday at ten o'clock.

Met pursuant to adjournment at the office of Messrs Kennedy & Webb, law building; and re-direct examination of John E. Neale, defendant commenced by Mr. Drewry, of counsel for defendant; to which the witness further deposeth and saith:

The witness produced Ledger B., already referred to, kept by B. J. Neale, and on looking at the entry on page 223, at the foot of the accounts, said the entry was made about the time of the surren-
125 der of the notes, but shortly after; it was after the surrender of
the notes. My son Ben., one of the complainants, saw the entry when it was made and approved of it. The twelve thousand dollar notes that I have spoken of were given to purchase stock of goods assigned to me by B. J. Neale merely as collateral.

1st interrogatory. You have stated that the amount of judgments, notes, accounts, &c., which were considered good upon the books at the time of the assignment, amounted to thirteen thousand five hundred and nine dollars and ninety-eight cents; now what portion, if any, has been collected?

(Objected to by Mr. Kennedy for complainant.)

Answer. Out of all I suppose there was about four thousand dollars.

2d interrogatory. State when you proceeded to collect the alleged good accounts, and what amount you found held in bar against them?

(Objected to by Mr. Kennedy for complainants.)

Answer. When I proceeded to collect these accounts I found in bar eight thousand and odd dollars.

3rd interrogatory. State whether these accounts marked good on your son's books, and whether you have any knowledge whether they were good or bad?

(Objected to by Mr. Kennedy for complainants.)

126 Answer. I had not.

4th. Look at your private account book already referred to and marked Exhibit "B," and state if your son ever saw that account, or a statement thereof, and if he acknowledged the same to be correct?

(See abstract "B.")

(Objected to by Mr. Kennedy for complainant.)

Answer. He saw statement of it, and acknowedged it to be correct.

5th interrogatory. Did you ever have any other accounts on this book against your son? and if so, whether you remember the items or amount thereof or not?

(Objected to by Mr. Kennedy for complainants.)

Answer. I have others Previously to this I had other accounts.

6th interrogatory. Can you state or not the reason why that book does not state those accounts just spoken of; and why they do no appear in the books at present?

(Objected to by Mr. Kennedy for complainants.)

Answer. Yes, sir; the reason of it was I had a portion of the leaves cut out of the books.

7th interrogatory. Do I understand you to say that you
127 had them cut out, or that it was done by your authority?

(Objected to by Mr. Kennedy for complainants.)

Answer. It was not done by my authority, nor did I cut them out.

8th interrogatory. When were these leaves cut out? was it before or after the assignment?

(Objected to.)

Answer. After the assignment.

9th interrogatory. Where was the books kept when the leaves were cut out?

(Objected to.)

Answer. It was kept in my dining-room, on the top of my desk.

10th interrogatory. Who had access to that book?

(Objected to.)

Answer. B. J. Neale.

11th interrogatory. Was B. J. Neale then boarding in your house?

(Objected to.)

Answer. He did not board there at the time, but he frequently came there, and had acccess to the books.

12th interrogatory. Can you state the aggregate of the charges
128 on the missing leaves of the books and any of the items that
were upon the said leaves?

)Objected to.)

Answer. I cannot state the amount, but it was a good amount; it was for my commissions for selling wood, and two hundred dollars I got from my sister's estate; I have no doubt there were other items, but I can not remember.

13th interrogatory. Who got this money?

(Objected to.)

Answer. B. J. Neale.

14th interrogatory. Were these commissions for selling wood landed on your wharf?

(Objected to.)

Answer. Yes, sir.

15th interrogatory. Up to April, 1861, do you know the amount of endorsements for your son? if so, what were they?

(Objected to.)

The amount of endorsements were six thousand five hundred and fifty dollars.

16th interrogatory. What was your son's age when he first went to clerking?

(Objected to.)

Anwer. About fourteen years of age.

17th interrogatory. How long did he clerk before he went into business?

(Objected to.)

Answer. Five or six years.

129 18th interrogatory. Did he board with you all that time?

(Objected to.)

Answer. He boarded with me from that time up to the time of his marriage, and after his marriage from time to time, as stated before.

19th interrogatory. Did he ever pay you board for himself or family?

(Objected to.)

Answer. He never did.

20th interrogatory. Did your son remain in the store after the assigment? and if so, how long?

(Objected to.)

Answer. Yes, sir, he remained after the assignment nearly all the time, with the exception of two or three months.

21st interrogatory. What amount of goods and cash did he get out of the store during that time?

(Objected to.)

Answer. He got two thousand nine hundred and forty-four dollars seventy-eight cents, as appears in my ledger. In regard to the amount of cash, in addition to this, as was not charged, I cannot tell; he acknowledged to me that he took four hundred and thirty dollars.

JOHN E. NEALE.

Re-direct examination rested.

Sworn to and subscribed before me this 12th day of February, 1866.

J. J. JOHNSON,
Special Commissioner.

Adjourned till to-morrow morning at ten o'clock, February the 13th, 1866.

130 *Defendant's testimony.—Mary E. Neale.*

TUESDAY, *February* 13, 1866.

Met pursuant to adjournment, at the office of Messrs. Kennedy & Webb, law building.

Mary E. Neale, being duly sworn according to law, and examined by Mr. Drury, of counsel for defendant, who deposetn and saith:

(Objected to by Mr. Kennedy, on the ground of incompetency.)

My name is Mary E. Neale; I reside on H street, between 4th and 5th streets, and am wife of the defendant in this cause; I am 56 years of age; I know the complainants in this cause; the complainant, B. I. Neale, is my son, and Mary H. Neale, his wife, one of the co-complainants, is my daughter-in-law; I know the time of their marriage; they were married September 7, 1858. In consequence of the transfer of her stocks to Benj. I. Neale, her husband, in order to prevent the money that was in Mr. Maury's hands, her guardian, from going

into the store. I was present when the defendant proposed to Ben. I. Neale to give him lot 16 in square 517, upon these conditions: That the defendant or Mr. Maury was to disburse this same money in Mr. Maury's hands in the erection of a house on that lot. B.
131 I. Neale refused emphatically to accept, saying he did not wish to own any property in Washington, and that if a house was all he had to give his wife, he would cut his throat. This occurred about the last of October, 1858, and after the marriage; Mary H. Neale was not present. The second conversation between the same parties occurred two or three months after the one above, in my presence. In this conversation, Ben. came and said, father, I accept that lot. The defendant replied, upon the same conditions, Ben., that Mr. Maury or myself are to disburse the money. He, Ben., said, father, I want you to disburse it, and let Mr. Maury alone. The third conversation was just before the commencement of this house, a day or two, maybe the day before. Ben. I. Neale asked the defendant to let him have lot 18, in sq. 517; all of the family objected, on account of its darkening the house; we were consulted about it. The defendant said, you can have this lot on the self-same conditions as lot 16, that Mr. Maury or myself are to disburse the moneys that are in Mr. Maury's hands. B. I. Neale consented that the defendant should disburse the money. This was all said and done solely to prevent the money from going into the store of the complainant.

1st interrogatory. Do you mean by this that such was the
132 understanding between the parties, as a part of the conditions on which the lot was to be given?

(Objected to.)

Answer. Yes; to prevent him from carrying the money into the store, and the defendant to disburse it. In regard to the construction of the house, it was agreed between the defendant and the complainant, in my presence, that Mr. Barron was to draw up a plan for the house. He did draw it up; I saw the plan on the table; he brought it to our house. This plan was not adopted, because he, the complainant, took it out of the defendant's hands. This plan was approved of by the defendant; I mean that the complainant took the construction of the house in question out of the defendant's hands. When the house was some two or three feet above the surface of the ground Ben. I. Neale came up and said that he regretted that the house was commenced, and that he should sell it as it stood. I replied, in the presence of the defendant, do you wish to swindle your father out of this lot? We will never give you a deed. Ben. I. Neale said he had not the money to build it. The defendant asked him what had become of his wife's money. Ben. replied that he had two thousand dollars of
133 bills to pay for his wife. I replied, you must have paid the bills of her sisters and the family, and he replied, I think I did. The defendant said to Ben., You have violated the conditions that I was to disburse the money. Ben. said nothing in reply to this; this was the first time we refused to give a deed. in my presence; some time in the following August, of 1859, the defendant, being in the country on a visit for his health, Ben. I. Neale said that he

wished his father, the defendant, written for, and wished me to write; that he could not finish the house. He cried, and said he would be disgraced, and that he was broke, then, for thirty thousand dollars, and it was not known that he was broken. He talked a long time; about three hours, I am sure, up in my room. He then said Mrs. Sears had money to lend, and said that defendant could make a mortgage and borrow money for him to finish the house. The defendant came up and talked the self-same thing over in my presence. Mr. Neale, the defendant, asked Ben. what had become of his wife's money, and he, the complainant, replied that he had put the money in the store.

Adjourned till Friday, at ten o'clock, February 16, 1866.

134 FEBRUARY, 16, 1866.

Met, pursuant to adjournment, at the office of Messrs. Kennedy & Webb, and the examination-in-chief Mary E. Neal resumed.

In answer to interrogatories propounded by S. P. Drury, esq., counsel for defendant, the witness further deposes and says:

2d interrogatory. State if you and your family approved of and encouraged the then contemplated marriage between your son and Miss Hamilton, now Mary H. Neal, one of the complainants?

(Objected to by Mr. Kennedy, counsel for the complainant.)

Answer. All of the family opposed the marriage except myself; I hoped to correct the course of his wicked life; that was just my reason.

The deposition of B. J. Neale, commencing at the 27th interrogatory down to the 30th interrogatory, and the answer thereto, was read to witness by counsel and asked to state if said statements therein contained, as deposed by the said B. J. Neale, are true. Witness, answering, says: Those statements are not true.

33d interrogatory and answer thereto of B. J. Neale's deposition, was read to witness and asked if the same be true or not. Witnessing, answering, says: The statements in the answer are not true.

135 37th interrogatory of B. J. Neale being read to witness, she states: I told Ben that his father would never give a deed for part of lot 18, and that I would never join in such deed.

Mr. Kennedy objected to this answer as being in reply to cross-interrogatory, and because the same is collateral.

3d interrogatory. Did you ever hear the defendant say in your presence, and in the presence of your son, Mary, (addressing yourself,) let us go in our own house and give Mary H. Neale her house?

Answer. I say positively I never heard him say so.

4th interrogatory. State who has paid the taxes on the property in question since the erection of the house in controversy?

Objected to by Mr. Kennedy.

Answer. The defendant.

5th interrogatory. State if in the conversation testified to by Mrs. Mary H. Neale, two or three weeks before the marriage with your son, on the porch attached to your residence, you heard the defendant promise part of lot 18 as a bridal present to your son's wife?

Answer. No such conversation took place, and no such promise made.

6th interrogatory. State if on the return of your son and 136 his wife from their visit to Charles co., Md., Mary H. Neale demanded possession of the house in controversy as her property, and if you assented to it, and advised the defendant to go back into his old house and live as we did before.

Answer. She never made any such demand and I never asssented to it in my presence. She knew all the conditions well.

(Objected to by Mr. Kennedy, the words "she knew all the conditions well.)

7th interrogatory. Did the defendant assent to it and agree to go back to the old house on that occasion?

Answer. There was no conversation of the kind took place.

8th interrogatory. State how long your son was in business for himself before he married?

Answer. He was in business about three years lacking a few days.

9th interrogatory. State what capital, if any, your son had in business?

(Objected to.)

Answer. He had no capital when he commenced.

137 10th interrogatory. State if your son boarded with his father and for what length of time?

(Objected to.)

Answer. He always boarded with his father up to the time of his marriage, and afterwards too.

11th interrogatory. Did he agree to pay the board bill as claimed by the defendant?

(Objected to.)

Answer. Yes, sir.

12th interrogatory. Please state the complainant's general conduct whilst a boarder in your family.

(Objected to.)

Answer. We managed him pretty well up to the time of his marriage. Since his marriage he was very abusive to his father, and mother, and sisters; all kinds of epithets he used, day and night; morning, noon, and night this abuse reigned in the house.

13th interrogatory. State if your son was accused in your presence of taking money from the store, and if he agreed to return it.

(Objected to.)

Answer. He was accused of taking forty-five dollars in gold; he did not promise to return it, but we made him do so by threats of having his room searched by an officer. He returned other 138 on being charged with taking them from the store. I mean one other amount.

Examination-in-chief here closed.

Cross-examined.

By Mr. **Kennedy, for complainants:**

I have attended here from day to day and heard the testimony of the defendant each day that he was examined. I have been present when every witness in this cause testified before the commissioner, except Dr. Eliot and Mary Ryder. I know Henrietta J. Kennedy, a witness examined in behalf of the complainants in this cause. I have no recollection of any such conversation as deposed in the deposition of Henrietta J. Kennedy at that time. I have no recollection of ever having any such conversation with Henrietta J. Kennedy at any time, and, according to the best of my recollection and belief, such conversation never did take place.

MARY E. NEALE.

Sworn and subscribed before me this 16th day of February, 1866.

J. J. JOHNSON.
Special Commissioner.

139 *Def't's test'y for defendants.—Julia V. Neale.*

FEBRUARY 20TH, 1866.

Julia V. Neale, being sworn according to law.

In answer to interrogatories propounded by S. T. Drury, counsel for defendant, the witness says:

My name is Julia V. Neale. I know the parties to this cause; I am sister to B. J. Neale, complainant, and daughter of the defendant. I reside in Washington City, D. C. I do not remember of hearing the marriage of Ben discussed in the family; the marriage was not encauraged by the family, my ma excepted; pa particularly disapproved of it; I never heard my father promise part of lot 18 to my brother's wife; I never heard my pa speak of the contemplated marriage at all. The first we knew of it Mary H. Neale told it herself that she was engaged. I never heard my pa speak of giving part of lot 18 to Mary H. Neale. I never heard the subject of giving a deed spoken of before the marriage; since the marriage I have heard him refuse to make a deed repeatedly. I lived with my pa at the time my brother boarded in the family.

140 1st interrogatory. State what the complainant's conduct was during the time he boarded in the house?

(Objected to by Mr. Webb.)

Answer. His conduct was most outrageous; troublesome beyond description; most abusive to his parents; ma, sister, and myself were afraid of him for our lives; I do not know whether pa was.

Cross-examined.

By Mr. Webb, for complainants:

My brother boarded with us all his life, until he was 26 years of age. There was an interval after his marriage of about three years, and then he boarded with us again for about eighteen months; nine months out of the eighteen he was at the hospital. During the nine months his wife remained with us; occasionally absent, when we would provide for her. My brother and myself speak, but are not on intimate terms. I have always spoken to my brother's wife, but we are not intimate terms. During the eighteen months that my brother and his family boarded with us we were on good terms; his wife tried to render herself very disagreeable.

JULIA V. NEALE.

Sworn to and subscribed before me this 20th day of February, 1866.

J. J. JOHNSON,
Special Commissioner.

141 *Def't's test'y.—Thos. H. Barron.*

Thomas H. Barron, duly sworn, and says in answer to interrogatories propounded by S. T. Drury, for defendant:

My name is Thomas H. Barron; I am about 42 years of age; I reside in Washington, D. C., and by occupation, carpenter and builder.

1st interogatory. State if you know John E. Neale and his son Ben. J. Neale?

Answer. I know them both.

2nd interogatory. State if John E. Neale employed you to prepare plans for the erection of a house on lot 16, in square 517, in this city and if so, about what time.

Answer. In the spring of 1858 or 1859 I was building for Mr. Sweeny near Dr. Eliot's. There was some money transaction between myself and Dr. Eliot; he appreciating my style in building houses, and recommended me to John E. Neale. I went to Mr. John E. Neale and had several interviews with him and the ladies of his family. Ben. may have been present; I do not know. He had consulted about the kind of house he wanted built, as I understood it, for 142 his son. All the family, I think, took great pride in making it comfortable for his residence. Plans were solicited by John E. Neale and I had them made; they were submitted; I am not certain whether they were improved upon or not; at all evence they were adopted. An estimate was made for the house; the sum I now forget; I spoke to B. J. Neale several times about the plans being convenient, and he seemed to acquiesce in everything that was going on.

THOS. H. BARRON, *Builder.*

Sworn to and subscribed before me this 20th day of February, 1866.

J. J. JOHNSON,
Special Commissioner.

Deposition of Wm. J. Donohoo for the defendant.

And the said William J. Donohoo, being about the age of 38 years, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matter at issue in said cause, I did carefully examine said William J. Donohoo, and the witness did therefore depose and say, as follows:

143 1st interrogatory. Do you know when the assignment from B. J. Neale to John E. Neal, of the goods, accounts, &c., was made, assigning the buissness of the store on Lousana avenue, formerly kept by B. J. Neale?

(Objected to by Mr. Webb.)

Answer. It was in January, in 1861, to the best of my recolection.

2nd interrogatory. Were you present when the stock in trade under that assignment was taken by B. J. Neale, one of the complainants. and William E. Hamilton?

(Objected to.)

Answer. No, sir.

3rd interrogatory. How long after the assignment just spoken of, before you had any knowledge of the goods assigned by the assignment?

(Objected to.)

Answer. About five months.

4th interrogatory. Did you examine the goods in the store before the five months?

(Objected to.)

Answer. Not until the expiration of the five months. I had no knowledge of the goods until five months after the assignment.

144 Adjourned till Friday, the 23rd of February, 1866.

By consent, adjourned till Saturday, 24th of February, 1866.

By consent, it was further adjourned till the 26th of February, 1866.

Feb. 26*th*, 1866.

Met pursuant to the above adjournment, at the office of Messrs. Kennedy and Webb, law-building, and by consent, the testimony of William J. Donohoo was further postponed until the 28th of February, 1866.

Met pursuant to adjournment, and the said defendant, by his counsel, S. T. Drury, esq., resumed the examination of Wm. J. Donohoo, who further depose and says, as follows, in answer to interrogatories propounded by the counsel:

5 interrogatory. Do you know whether the plaintiff in this case drew money from his father's store after the assignment to pay his private debts; and if so, to what amount?

(Objected to by Mr. Webb.)

Answer. During the time I was employed by the defendant

145 I frequently heard the defendant remonstrate against Benja-

min J. Neale taking money out of the store to pay off his liabilities and private debts.

6th interrogatory. State if during the time that Benjamin J. Neale was employed in and about the store he locked up the store against the remonstrance of the defendant and took forcible possession of the books, and carried them away?

(Objected to.)

Answer. I know of the fact of his having locked up the store and took forcible possession of the store, and of the books of the defendant.

7th interrogatory. Did you hear his father at that time, or at any other time, charge him with mutilating his private books, refer'd to in this investigation?

(Objected to.)

Answer. I heard his father so charge him with having mutilated the books of the establishment, by extracting leaves that were important.

8th interrogatory. State, if shortly after the occurance
146 above testified to, you saw the complainant make an attempt
to get from his father one of the books handed over to the defendant under the assignment.

(Objected to.)

Answer. I saw the plaintiff, Ben., in possession of one of the most important books, which his father demanded, and which he refused to surrender to his possession. His father attempting to take possession of it; a scuffle ensued, and the father was violently thrown on the floor, when I interfered to pacify the parties, and said to B. J. Neale that he was doing wrong, and persuaded him to give me the book, which I then handed over to the father.

9th interrogatory. Did you prepare a statement of their business, of the assignment? and if so, what way?

(Objected to.)

Answer. I prepared several statements in relation to the business of the concern which were collected from the books of the firm of B.
J. Neale & Co.; and from information submitted by John E.
147 Neale, the defendant and from memorandum submitted to me
and loose scraps of paper, canceled notes, and judgements.

(The whole of this answer objected to.)

10th interrogatory. State if you have refreshed your memory in regard to the business of the concern since you have been sworn in this cause, and if you remember examining the quality and value of the stock in trade; and if so, how long after the assignment referred to, and what the estimated value thereof.

(Objected to.)

Answer. I have refreshed my memory from written statements which I had formerly made for the defendant. I never examined the stock, but recollect to have been in the store within a month after the assignment, and from a casual observation and a full knowledge of mercantile pursuits, and from my subsequent knowledge of the contents of the store, I estimate the value at that time at between twenty-five hundred and three thousand dollars.

(Answer objected to.)

Cross-examined.

By Mr. Webb, for complainants:

1st. cross-interrogatory. What was the relation of the two
148 Neale's, father and son, while you were in the employ of the
defendant?

(Objected to.)

Answer. Manifest variance during the whole time I remained there. Ben. very rarely came about the store unless his father was not there. My understanding was that Ben. was there for the purpose of assisting his father in carrying on the business.

2d cross-interrogatory. When these quarrels took place, of which you have testified, did you notice whether Ben. J. Neale was laboring under any unusual excitement?

(Objected to.)

Answer. He evidently was acting under some hallucination. His actions were strange. But apparently carrying on his intended threats and objects in obtaining possession of the books and papers, and further said he would show who was owner of that establishment.

3d cross-interrogatory. Were you paid a salary, or by the day for what you did?

Answer. I was paid for the job, as a professional book-keeper, to assist the defendant in settling up the business. In this I was engaged off and on for some six months.

4th cross-interrogatory. How was Ben. paid?

(Objected to.)

149 Answer. From my understanding the father, and from Ben.
his services were given gratis.

5th cross-interrogatory. Had Ben. any profession, or was he engaged in business during the time you were engaged in the store?

Answer. No, sir.

And the respective parties by their counsel here closed.

NOTE.—The deponent having this jurat read over to him, he desires to make the following statement in reply to the fifth interrogatory. Ben. J. Neale had, without the consent of his father, took money out of the draw and charged it to himself.

WM. J. DONOHOO.

Sworn to and subscribed before me this 28th day of February, 1866.

J. J. JOHNSON,
Special Commissioner.

150 *Def't's test'y.—Mrs. G. A. Anderson.*

Deposition of Mrs. Glorvina A. Anderson, for defence:

And the said Glorvina A. Anderson, being about the age of years, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matter at issue in said cause, I did carefully examine the said Glorvina A. Anderson, did thereupon depose, testify, and say as follows:

My name is Glorvina A. Anderson; I am the daughter of the defendant. My father gave Ben. J. Neale whole of lot 16 in square 517, on the conditions that my father should disburse the money for the building of the house then in the hands of Mr. Stanislaus Maury. This I heard, being present at the conversation between Ben., his father and mother. And also that my father should superintend and plan the house. And with this understanding my father employed Mr. Barron to draw up the plans, specifications of the house, &c., stating to Mr. Barron that he wished him to do it as cheap as possible, as he wished to pay him cash. Then my brother, Ben. J. Neale, seemed to change his mind or object in some way to have the house built. His parents urged him that he had better accept the 151 proposition, stating that it might be his sole dependence hereafter. He seemed to get very angry, and said if a house was all that he would have he would cut his throat. Then, in some way, for three or four months, the talk all died away about building the house. Ben. J. Neale came again to my father; I was present; then Ben. wanted the lot changed from 17 to 18, because there was a mortgage on lot 16; he did not wish to take that lot. We were all unwilling for the change, we did not want him to take lot 18. The lot was exchanged, with the same conditions; my father was very particular about that, the—conditions. I understood it was a lot to build on; I do not know whether it was part of a lot or not. Then in a day or two after that, I think, the house was commenced. My father found Mr. Morsell superintending the building of the house. My father was very much disatisfied during the whole building of the house, that Mr. Morsell should have anything to do with the house. My father often expressed himself to the family and to Ben. very much disatisfied. He expected to have the disbursement of the money in supeintending of the house, as Ben. promised. The next thing I remember the house went on—is when the house was about three or four feet above the surface of the ground, Ben came to his parents again and wanted them to give him a deed for the lot, in order to sell the lot, foundation, and all, just as it stood. Then it 152 was my parents told him that they would never give him a deed for it. My mother says: What, Ben., do you wish to swindle your out of the lot. I would never put my hand to the paper; you shall never have a deed to the lot. My father had said the same thing about the time of this conversation, or it may have been in this conversation. Then my brother was very importuning, and from time to time he was after a deed, but they always said they would never give him a deed, that the lot should never go out of the Neale family. At these conversations, Mrs. Mary H. Neale was not always present, sometimes she would be and sometimes not. The next I remember about the house is, the house went on slowly building during these conversations, about seven feet, when I beard my father ask my brother what had become of his wife's money. Ben. replied that he had paid thousand dollars for debts of his wife contracted by

her before her marriage. He wanted my parents then to give a deed, which they refused to do. They were always in conversations about the deed. Frequently afterwards my brother wanted a deed, but my father always refused to give him or anybody else a deed. My father said he never would give him a deed, because he knew he would sell it. My father also said that he had borrowed the money to build the house, and he had to hold on, as it would be doing injustice to the other children; and that Ben. broken all the conditions that
153 he had made with my father about the building of the house.

Disbursing of the money was the main hobby with my father; if he had got the money in his hands he was certain it would go in the house. I heard my father say to my brother, and to all of us, that he, my father, had a great deal of money deposited in the store; that the house was as much built out of his money as out of Mary H. Neale's, and it must be investigated. Ben. would never make any reply, but would fly off talking about something else. I have heard them all say, before the house was built, and after it was commenced, they reserved themselves the right to give the lot to whom they pleased, and would not be forced to give it to any one, because Ben had violated his conditions.

I heard Ben. say, while he was living with us, and after he broke in business, and came back with us, "I am glad, father, you have charged me with board." My father said, I have charged you with board. While Ben and his family lived with us, he told my father to charge board for himself and family. My brother went into business in the year 1855 upon the credit of my father. Ben. came back from Baltimore, and said that they had telegraphed from the house where he bought goods to Mr. Stanislaus Maury to know if B. J. Neale was a responsible man, and that Mr. Stanislaus Maury replied that
154 B. J. Neale himself was not responsible, but his father was,
and that they might let B. J. Neale have goods to the amount of forty thousand dollars on his father's credit. Immediately what he bid for, they were very much pleased around the store, and said let B. J. Neale have the goods and have them packed up. In the years 1855, 1856, 1857, and up to the time of my brother's failure, my father had ample means, including the house he lived in, not the house in question; his income was at least two thousand per year. My father had three houses to rent, besides the one he lived in. He also derived considerable income from his negroes, one of whom was an engineer, and one a blacksmith, besides other negroes hired out.

Adjourned till to-morrow at three o'clock.

Met pursuant to adjournment, at the office of Messrs. Kennedy & Webb, law building, and the examination-in-chief of Mrs. Anderson was resumed by Mr. Morgan, counsel for the defendant.

I heard my brother say to my father these words: "Father, you shall not loose anything by me or my business. (This was after the house was built). For this reason I have made you the preferred creditor, and have given you a bill of sale of the store. In
55 order to secure yourself, first and foremost, all your responsi-

bilities, your endorsement, private debts, securities, and everything; after you have secured yourself this, I want all over and above to go to my other creditors, and I will stay with you and attend to the business; this is the agreement I made down at the store with you, and I will stick to it.'' My brother had then failed. This condition to stay with his father he violated, as he did all others. He went away to Charles county, Maryland, and did not attend to the business in the store. My brother went into business about three years before he was married. When he left my father's house he went to the asylum, and when he left the asylum he came to my father's house again and stayed about six weeks, and then went away. My pa, myself, sister, and all of us, opposed the marriage. My ma would take up for my brother, and said it was best for young men to get married; otherwise she opposed it. There never was any such conversation took place that my father would give a lot to promote the marriage of my brother. I lived in the house all the time, and up to the time my brother and his family left the house. I was married after my brother's marriage, and lived in my father's house up to about four months ago. My father's house, the house
156 in question, is very damp.

1st interrogatory. Do you know anything about the missing leaves in your father's private book, already spoken of in testimony?

(Objected to.)

Answer. All that I know about the missing leaves of the private book is this: I heard my father several times accuse my brother to his face—he did not say it behind his back—of having cut those leave out, and my brother B. J. Neale, never denied it. I have often heard my father upbraid my brother, after the assignment, and say Ben, you and Hamilton are taking money out of the store. As I understood it, they were taking the money to pay debts of their own contracting. I do not remember what Ben's reply was; it never was satisfactory to me or my father either.

Cross-examined.

By Mr. Webb, for complainants:

My brother failed in business about two years after his marriage. I do not recollect dates. I think it was some time about February, 1860 or 1861; now I remember, it was in 1861. The house was commenced in the last part of April, the first of May, 1859; it was finished in the spring of 1860. In 1860 and 1861, I think, my brother was house-keeping for himself; during this time he also lived
157 with Dr. Eliot a month or so. I visited them, but not intimately. I never visited anybody intimately. My relations towards them were pleasant. I have very kind feelings towards both my brother and his wife now; my feelings have always been very kind to them. I do not visit them now. As far as I am concerned, I would just as leave visit them now as not. They were invited to my wedding; they did not attend, and never returned the call, and I

ceased to visit them. I have not visited them since they left the house one year and a little over. I am not certain about dates.

GLORVINA A. ANDERSON.

Sworn to and subscribed before me this 27th of February, 1866.

J. J. JOHNSON,
Special Commissioner.

158 *Def'ts test'y.—Wm. E. Dant.*

Deposition of Wm. Dant for defendant.

And the said William Dant, being about the age of 37 years, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matter at issue in said cause, I did carefully examine said William Dant, and he did thereupon depose, testify, and say, as follows:

My name is Williant Dant. My age is about 37. I reside in this city, and am by occupation a master-builder and brick-layer. I know the defendant and the house in controversy from the time of its erection. To look at the house outside it is a very fine looking house, a very desirable house to live in. I have been in the house, and I find the lower part of the house, the cellar, to be very damp. I think the east wall to be damp; in fact I know it to be very damp. The wall has never been finished properly, and a wall like that, always exposed to the east, is alway damp. That wall could be made perfectly dry by expending a few dollars on it. With the exception of the east wall and the lower part it seems that it would do very well. The steps along the front leading to the basement are unfinished. I have some experience in renting houses. Some parties might pay seven, eight, or even nine hundred dollars during the war; others would not pay half of that amount; four to one of the generality of the people would not pay it, owing to the condition of the house. It would take a considerable amount to fix the cellar; the condition of the cellar affects the wall. 159

Cross-examined.

By Mr. Webb, for complainant:

I am within a stone's throw of this house, and the cellar, where I am, contains water. If there was a sewer through the street it would make the cellar dry. As it is, when the windows are [are] closed, and the house shut up, the dampness will go up three or four stories. This is a wet locality. I do not live on this corner, but I am doing business there. I am acquainted with the rental of houses in this locality; they rent very well.

W. E. DANTE.

Sworn to and subscribed before me this 27th day of February, 1866.

J. J. JOHNSON,
Special Commissioner.

160 *Def't's test'y.—Chas. Keenan.*

Deposition of Charles Keenan for defendant:

And the said Charles Keenan, being about the age of 75 years, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matter at issue in said cause, I did carefully examine said Charles Keenan, and he did thereupon depose, testify, and say, as follows:

In answer to interrogatories by Mr. Drury, says:

My name is Charles Keenan. I am 75 years of age. I know the parties to this suit. I know the house in controversy; the house is in an unfinished condition. I have been through the house, and know the value of property in that vicinity. I suppose if a person did not know the condition of the house they might give five or six hundred dollars per annum. During the war it might have rented for six hundred dollars.

This witness was not cross-examined by the counsel for the complainant.

C. KEENAN.

Sworn to and subscribed before me this 28th day of February, 1866.

J. J. JOHNSON,
Special Examiner.

161 *Def't's test'y.—Dr. J. Eliot.*

Deposition of Dr. J. Eliot for defendant:

And the said Dr. J. Eliot, being about the age of 50 years, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matter at issue in said cause, I did carefully examine said Dr. Johnson Eliot, and he did thereupon depose, testify, and say, as follows, in answer to interrogatories propounded by S. T. Drury, of counsel for defendant:

My name is Johnson Eliot. I am a practiceing physician. I have been practiceing medicine in this District since 1843. I have always been attached to the colleges of this District. I know the parties to this suit.

1st interogatory. Please state if you ever paid any bills for B. J. Neale to the asylum, whilst he was an inmate thereof.

(Objected to.)

Answer. I did not.

Cross-examined.

By Mr. Webb, for the complainants:

1st interogatory. Were you at the asylum at any time when board was paid for B. J. Neale at the institution? and if so, by whom was it paid?

Answer. I was; it was paid by the defendant.

162 2nd interogatory. Do you remember the amount? and if so, what was it?

Answer. I do not remember the amount.

3rd interogatory. Was the payment made by money, or was it in checks?

Answer. By checks.

4th interogatory. Did you indorse the checks? and if so, for what reason?

Answer. I did endorse it, because the defendant was unknown to the gentleman in charge there; I have not heard from the checks since; and consequently I have never paid it.

JOHNSON ELIOT.

Sworn to and subscribed before me this first day of March, 1866.

J. J. JOHNSON,
Special Examiner.

NOTE.—The defendant, through his counsel, here introduced two paper-writings, one purporting to be an affidavit, made by one J. C. Duvall, residing in the Territory of Montana, and the other paper-writing a certified copy from records of the Orfans Court, in Charles county, Maryland, which it is aggreed by the counsel for complainants may be read in evidence at the hearing of this
163 cause, subject only to such exceptions as may be taken to them for matters of substance and not for form, which said paper-writings are herewith filed and marked Exhibit "D, E."

And at the same time the counsel for the defendant offered in evidence a certified copy of bill filed in equity cause No. , to which said last paper-writing the counsel for complainants objected.

The counsel for the defendant having closed his case, the defendant, John E. Neale, asks the privilege of correcting his answer to cross-interrogatory No. 15, by in erting the sum of sixteen thousand three hundred and three dollars and fifty-three cents, as a correct answer to said interrogatory.

The counsel for the complainants objects to this proceeding on the part of the defendant, because he says the question itself shows that the defendant, when he made the reply, had the books before them; and because the facts in the case show that this and the other books of the concern have been in his, the defendant's, custody for several years; and because the books itself, being an exhibit in the case, would be the best evidence of how accurate the defendant is in his statements.

The case on the part of the defence here closed.

J. J. JOHNSON.
Special Examiner.

Adjourned till Monday 5th day of March, 1866, when the complainants proposed to introduce rebutting testimony.

164 DISTRICT OF COLUMBIA, *County of Washington, ss*:

I, John J. Johnson, special examiner in chancery, do hereby certify, that in pursuance cf the annexed notice the foregoing depositions were taken down, and by me reduced to writing in the presence of and from the statements of the witnesses at the time and place designated in the caption thereof, and were then and there by me read over to the witnesses, by them subscribed in my presence, and in the presence of the solicitors of the respective parties who were then and there attending, the witnesses having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters at issue in said cause. I further certify, that I am not of counsel for any of the parties to said cause, or in any manner interested therein.

J. J. JOHNSON,
Special Examiner.

165 In the Supreme Court of the District of Columbia.

B. B. NEALE, AND MARY H. NEALE, HIS WIFE,
vs.
JOHN E. NEALE, for complainants.
} No. 112. In chancery.

DISTRICT OF COLUMBIA, *County of Washington, ss*:

Be it remembered, that on this fifth [fifth] day of March, in the year of our Lord one thousand eight hundred and sixty-six, I, John J. Johnson, special examiner, in chancery, did cause to be personally present, at the office of Messrs. Kennedy & Webb, law building, in the the city of Washington, in said District, James L. Barbour, Elias E. White, Baruch Hall, W. E. Hamilton, B. J. Neale, Fendall J. Cain, A. S. Shaw, to testify on the part and behalf the complainants in a certain cause now depending in the Supreme Court of the District of Columbia, wherein B. J. Neale and Mary H. Neale are complainants and John E. Neale, defendant.

166 *Compl't's test'y—Rebutting.—Jas. L. Barbour.*

Deposition of James L. Barbour for complainants.—Rebutting.

And the said James L. Barbour, being abont the age of 31 years, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matter at issue in said cause, said James L. Barbour, and he did thereupon depose, testify, and say, as follows:

(This witness, having been sworn, the counsel for the defendant objects to his testimony on the ground of having been informed by complainant's counsel, that it was for the purpose of ascertaining the value of the stock on hand at the time of the assignment, and for a further reason that it is not evidence; but if evidence, should have been given in chief.)

The witness, then in answer to interrogations by complainant's counsel, says: My name is James L. Barbour; I have been in the grocery business since 1850, and twelve years of this time on Louisiana avenue, three doors from the store where B. J. Neale carried on business. I don't remember when the assignment was made. I recollect the fact of John E. Neale taking charge of this store, 167 but I do not recollect the time. From impressions made upon my mind at the time, and from going in and out, the stock on hand at that time, to the best of my recollection, amounted to between six and seven thousand dollars. I made no particular examination of the stock, but was in and out of the store frequently.

(This evidence was objected to by defendant's counsel.)

JAS. L. BARBOUR.

Sworn to and subscribed before me this 5th day of March, 1866.

J. J. JOHNSON,
Special Examiner.

Compl't's test'y—Rebutting.—E. E. White.

Deposition of Elias E. White, for complainants—Rebutting.

And the said Elias E. White, being about the age of 37 years, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matter at issue in said cause, I did carefully examine the said Elias E. White, and he did thereupon depose, testify, and say as follows:

(This witness having been sworn, the counsel for the de-
168 fendant objects to the testimony on the ground of having been informed by complainant's counsel, that it was for the purpose of ascertaining the value of the stock on hand at the time of the assignment, and for a further reason that it is not evidence; but, if evidence at all, it should have been given in chiet.)

The witness then, in answer to interrogatories propounded by complainant's counsel, says:

My name is Elias E. White. I have been in the grocery business for twenty-one years, and all the time it has been next door to B. J. Neale's store. I think it was in the year 1861, that John E. Neale took charge of the store. It is pretty hard to tell what was the value of this stock of goods. I have seen the goods hundred of times. I should judge the stock of goods and store fixtures in that store, was worth not less than five thousand dollars; how much over would depend upon how much tea in the chest, and how full the packages were. No man could tell unless he went in and weighed the goods.

1st interrogatory. Did you ever have any conversation with John E. Neale about the value of the stock of goods in the store?

(Objected to by Mr. Morgan, for defendant.)

Answer. Well, at the time of Ben's failure, and after the defendant took possession of the store, he told me that he took pos-
169 session of the store for the purpose of saving himself as endorser to the amount of three or four thousand dollars; and that after selling off the goods, collecting the debts, and

settling up the business, and paying his endorsements for Ben., he intended to turn over the balance of the money to the creditors; that he did not want to make a single cent out of it himself.

Cross-examined.

By Mr. Morgan:

Merely from going into the store I judged about the value of the stock; I made no examination. I never made any examination of the whiskey, sugars, teas, molasses. I made no examination of anything in the store; I made no examination of any liquor casks or boxes. At the time, or shortly after the assignment, the defendant told me that the concern would pay something.

1st interrogatory. Whether you are not interested in a suit now depending in the Supreme Court of the District of Columbia, against John E. Neale, the defendant in this cause, for money which you claim from the defendant by virtue of the assignment or bill of sale, already spoken of, from Ben. J. Neale, one of the complainants to him; and have you furnished money to carry on that suit?

(Objected to by Mr. Webb.)

Answer. I cannot answer this question, because I do not know anything about it.

170 2d interrogatory. Have you furnished any money to carry on any suit now depending in the Supreme Court of the District of Columbia, against John E. Neale?

Answer. I have never furnished money to the lawyers. I gave money to Ben. to carry on this suit, and if he recovered I expected to get it back. I do not know what Ben. did with it.

E. E. WHITE.

Sworn to and subscribed before me this 5th day of March, 1861.

J. J. JOHNSON,
Special Examiner.

Compl't's test'y—Rebutting.—B. Hall.

Deposition of Barauch Hall, for complainants—Rebutting.

And the said Baruch Hall, being about the age of 50 years, and being by me duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matter at issue in said cause, I did carefully examine the said Baruch Hall, and he did thereupon depose, testify, and say as follows:

171 In answer to interrogatories the witness says:

My name is Baruch Hall. I am in my fiftieth year. I know the parties to this suit. I understood that Ben. assigned his stock of goods to John E. Neale. I know the fact of John E. Neale taking charge of the store. I was before this time employed in the store by B. J. Neale. I was there up to September, 1859. It was not long after this that I saw the defendant in charge. I am in the grocery business, and have been about ten years. The witness now corrects himself, and says that he left either in 1859 or 1860; upon reflection, the witness says it was in the fall of 1860. I visited the store once or twice after I left. I was there once and saw the defendant there. I did not visit there frequently. When I left the store, the stock was worth about eight thousand dollars. I cannot say whether it was much diminished or not when I visited the store. John E. Neale, from time to time, did borrow money from B. J. Neale; B. J. Neale's book will show it. This was during the five years that I was there. The money was not returned that I know of—that is, not all of it. Ben. never borrowed money from his father to go into the business.

Cross-examined.

By Mr. Morgan:

I do not know the exact time when the assign was
172 made. I left the store of B. J. Neale about three months before the assignment. My belief about the stock of goods is because I was familiar with them. When I left, I could see from the hogsheads of sugar, boxes, and barrels, what they contained, and by rapping on the liquor barrels I could tell pretty well how much was in them. I did not gauge or weigh them. At the time I left there was no stock taken. There never was any taken during the time I was there for five years. When Demming went out he took out part of the stock; he went out the time I did. My testimony as to the value of the stock relates to the stock that remained after Demming went out. After I saw the defendant there, I did not make any particular examination of what was in the store. The defendant never loaned Ben. any money to go into business that I am aware of. I think the defendant did loan Ben. money during the progress of the business, but nothing like as much as he borrowed. I know this to be a fact, and the books will show it.

BARUCH HALL.

Sworn to and subscribed before me this 5th day of March, 1866.

J. J. JOHNSON,
Special Examiner.

173 *Deposition of B. J. Neale, for complainants—Rebutting.*

And the said B. J. Neale, being about the age of years, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matter at issue in said cause, I did carefully examine said B. J. Neale, and he did thereupon depose, testify, and say, as follows:

In answer to interrogatories by counsel for complainant, says: The witness looked at Ledger B, heretofore introduced in this cause, and says that the entry on page 223 in the handwriting of the defendant. The entry was not made in my presence. I never saw this entry, or any part of it, until I saw it when the book was produced before the commissioner.

1st interrogatory. State whether, in April, 1861, or at any other time since you made the assignment of the stock of goods spoken of here to your father, you and he ever made a final settlement or adjustment of the accounts previously between you.

Answer. No, sir; he never settled his accounts with me since the assignment.

174 2d interrogatory. State whether, in April, 1861, or at any other time since the assignment aforesaid, you surrendered to your father four notes, at three thousand dollars each, amounting in all to twelve thousand dollars, which was passed to you by him at the time of the assignment aforesaid.

Answer. I never delivered any of those notes up.

3d interrogatory. State when you obtained those notes, what you did with them.

Answer. I placed those notes in a private drawer in my iron chest. No one, that I know of, ever had access to that drawer, except my father, and then it was when I was in the country on a visit. A day before I left Washington, on that visit, he asked me to give him that key. I gave him the key. On my return I asked him for the key. He said that it was lost. I wrenched 'the draw open, and found my notes and papers gone.

4th interrogatory. How long before leaving Washington, on that visit, you saw those notes in that draw?

Answer. I saw them daily—almost daily. They were in that draw the day I left Washington.

175 5th interrogatory. You have seen a paper marked Exhibit E, filed in this case. State whether the amount mentioned in that exhibit is the whole amount that you received, as your wife's distributive share of her father's estate; and if not, state what other monies or securities you received in her behalf.

Answer. It was not the whole amount. I received Baltimore city stocks, through the hands of Stanislaus Maury, from John Hamilton, three thousand dollars.

The witness, continuing, says: The safe was in the assignment to my father. I retained key of the private draw.

B. J. NEALE.

Sworn to and subscribed before me this 7th day of March, 1866.

J. J. JOHNSON,
Special Examiner.

Deposition of J. Fendall Cain, for complainants—Rebutting.

And the said Fendall Cain, being about the age of 33 years, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matter at issue in said cause, I did carefully examine said J. Fendall Cain, and he did thereupon depose, testify, and say as follows:

176 In answer to interrogatories of counsel for complainants, says: My name is J. Fendall Cain. I am about 33 years of

age. I know the parties of this suit, and am brother-in-law of B. I. Neale, one of the complainants to this suit. To the best of my recollection, it was the last week in February, 1862, when B. I. Neale went to the asylum. From that time B. I. Neale's wife spent the greater portion of her time at my house; her time being divided between my house and the house occupied by Captain John E. Neale, the defendant. Things continued that way until the 5th of April, 1862, on which day her second child was born, in my house. From that date she remained in my house, as her home, cared for, protected, lodged, and subsisted at my request. She remained at my house, as her home, until eight or ten days, to the best of my recollection, prior to B. I. Neale's return from the insane asylum. She then returned to the house occupied by John E. Neale, at my advice. During the whole of that period I have never received one cent from Captain Neale, the defendant, or any one else.

1st interrogatory. You have stated that you married the sister of the complainant, Mary H. Neale. State, if you please, whether you received your wife's distributive of her father's estate;
177 and if so, what the amount was, and how it was paid to you.

(Objected to by Mr. Morgan, for defendant.)

Answer. I did receive the amount which was represented to me by her guardian as being her share. The amount received from her guardian personally was four thousand two hundred and five dollars and eighty-eight and three-quarter cents. It was in notes, secured by deeds of trust, with the exception of a cash check on the Bank of Washington for one hundred and five dollars and eighty-eight and three-quarter cents. The balance was in Baltimore city stock, of three thousand four hundred and two dollars and forty-three cents, amounting, in all, to seven thousand six hundred and eight dollars and thirty-one cents.

J. F. CAIN.

Sworn and subscribed before me this 7th day of March, 1866.

J. J. JOHNSON,
Special Examiner.

178 *Deposition of Nicholas S. Shaw, for complainants—Rebutting.*

And the said Nicholas S. Shaw, being about the age of 46 years, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matter at issue in said cause, I did carefully examine said Nicholas S. Shaw, and he did thereupon depose, testify, and say as follows:

In answer to interrogatories propounded by counsel for complainants, says: My name is Nicholas S. Shaw. I am about 46 years of age. I know the parties to this suit. I do not recollect about the time of the assignment by B. I. Neale to John E. Neale. I do not recollect any conversation about the time of the assignment, except a conversation that occurred at an arbitration between B. I. Neale and Baruch Hall. I heard John E. Neale say that

he was largely indebted to his son. Mr. Hall came in then,
and took up the conversation. I did not hear much afterwards.
I was one of the creditors of B. I. Neale. I think I got in the
neighborhood of two thousand of the accounts of the books, and
Mr. John E. Neale paid me the balance, in money, about one
179 thousand dollars. I am not much acquainted with groceries.
I mean, I have never been in the retail business, but I know
something about it. I should think the stock in the store, at the
time of the arbitration, was worth about six thousand dollars.

(The testimony of this witness objected to by counsel for defendants.)

Cross-examined.

By Mr. Drury, for defendants:

The indebtednesss of B. I. Neale to me was in one note. The note was here shown to witness, which he recognized as the note marked exhibit "F," and herewith filed in said cause, the amount of which is thirty-four hundred dollars ($3,400.) At that time I was in the dry-goods business, and am up to the present time. I never made any particular examination of the stock in trade in that store, this was merley a conjectured opinion. I was in the store every day or so.

I never examined the barrels, casks, boxes &c., they may have been empty for all that I know.

Re-direct examination.

By Mr. Webb,

(Objected to by Mr. Drury.)

1st interrogatory. Look at the note marked Exhibit "F,"
180 and say whether the two thousand dollars in accounts, and the
one thousand dollars in cash, together, make the whole amount
that was paid to you, or if you received the whole amount therein
contained?

Answer. No sir; I deducted our hundred dollars in settlement.

N. S. SHAW.

Sworn to and subscribed defore me this 7th day of March 1866.

J. J. JOHNSON,
Special Examiner.

Deposition of Wm. E. Hamilton, for complainants—Rebutting.

And the said Wm. E. Hamilton, being about 29 years of age, and being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth, touching the matter at issue in said cause, I did carefully examine said William E. Hamilton, and he did thereupon depose, testify, and say, as follows, in answer to interrogatories propounded by complainant's counsel:

I know the parties to this suit. Mary H. Neale, one of the

181 complainants, is my sister. Part of the year 1860, I was with Stanislaus Maury. The latter part of 1860, I was clerk for B. I. Neale, one of the complainants. I was present at the time of the assignment heretofore made by B. I. Neale to John E. Neale and the taking of the stock and inventory. I assisted in taking the inventory with some others. The stock carried in that inventory was all in the store at that time. Our guide was the cost-price of the goods by the bills as near as we could come to it. After the competition of the inventory, I did not add up the total amount, but it was added up in my presence by two or three, and were perfectly satisfied that the addition was correct. The aggregate amount of the stock, as near as I can come at it, was between six and seven thousand dollars. The aggregate of the stock was transferred to one of the books of B. I. Neale, which book passed under the assignment of the defendant. The witness here referred to one of the books which passed under the assignment, containing a list of the confidential debts, and being the same book, and heretofore produced by the defendant, and I saw this list at the time of the assign-
182 ment, and it is the same now, unchanged. Among this list is a confidential debt due Mary H. Neale to the amount of two thousand and eight dollars. The Mary H. Neale referred to in this list is Mary H. Neale, one of complainants in this suit.

After the inventory was taken, and before signing of the note, B. I. Neale remarked to his father that he wished the first of these preferred creditors Mary H. Neale, paid, and give her a lease or deed of the house, which the defendant consented to do, and then to pay of the preferred creditors, if any was left to be divided among the general creditors, which was agreed upon by B. I. Neale and Jonh E. Neale.

Mary H. Neale was to be paid out of the first money derived from the proceeds of sale under the assignment to the defendant.

1st interrogatory. In your testimony just now you mentioned that it was understood between one of the complainants and the defendant at that time that the defendant was thereupon to make a lease or deed of the house, the house in controversy in this suit, to Mary H. Neale, one of the complainnts therein. I want you now to state whether, in thus using the term lease or deed, you used them as
183 synonomous expressions, meaning one and the same thing, or whether you meant that the house in question was either to be leased to Mary H. Neale for a term of years, or conveyed to her in fee simple at the option of the defendant?

(Objected to by Mr. Drury.)

Answer. It was to be Mary H. Neale in fee simple as her house and lot. These were pretty much the words used at the time. Mary H. Neale, received as her share from her father's estate, at one time from Mr. Maury about four thousand dollars, and at another time about three thousand dollars, in Baltimore city stocks. After reading over the testimony of the witness he desires to make an explanation in regard to his testimony relative to the confidential debt that was to be paid to Mary H. Neale, and says: This confidential debt was to be paid out of the first monies that came into the hands of the defendant from the accounts, books, and stocks transferred to [to] the defendant.

The counsel for defendant objects to this explanation, because the complainants' counsel drew the attention of the witness to that
184 portion of his testimony, and asked whether he meant to say, or be understood as saying, that the confidential debt due to Mary H. Neale was to be paid out of the first monies received by the defendant upon the sale of the goods assigned to him as aforesaid, or whether it was to be paid out of the first monies that came into his hands under the assignment.

The counsel for defendant also objects to the entire deposition of this witness, for the reason that it is not evidence, and if evidence, not rebutting, and should have been brought out on the examination in chief.

Cross-examined.

By the defendant's counsel:

1st interrogatory. State if you have any knowledge of B. I. Neale, one of the complainants, collecting debts of the assignment and making entries on the books passed under said assignment?

(Objected to.)

Answer. I know but very little of the collection of the accounts after the assignment. I have no knowledge whatever of B. I. Neale's collecting debts after the assignment.

WM. E. HAMILTON.

185 Sworn to and subscribed before me this 17th day of March, 1866.

J. J. JOHNSON,
Special Examiner.

In the Supreme Court of the District of Columbia.

For Defendant.

B. J. NEALE AND MARY H. NEALE, his wife, *vs.* JOHN E. NEALE.	No. 412. Equity.

DISTRICT OF COLUMBIA, *County of Washington, to wit:*

Be it remembered, that on this 10th day of April, in the year of our Lord one thousand eight hundred and sixty-six, I, John J. Johnson, special examiner in chancery, did cause to be personally present at the office of Messrs. Kennedy & Webb, law building, in the city of Washington, in said District, R. T. Neale, Mary E. Neale, and John E. Neale, to testify on the part and behalf of the defendant in a certain cause now depending in the Supreme Court of the District of Columbia, wherein B. J. Neale and Mary H. Neale are complainants, and John E. Neale defendant.

186 *Deposition of Mrs. Mary E Neale, for defendant.*

And the said Mary E. Neale being about the age of years, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matter at issue in said cause, I did carefully examine said Mary E. Neale, and she did thereupon depose, testify, and say as follows :

In answer to interrogatories propounded by Samuel T. Drury, counsel for defendants :

1st interrogatory. Please state if your son, the complainant in this cause, made any statement to you in regard to the surrender of four three thousand dollar notes to his father; and if so, what was that statement.

(Objected to Mr. Kennedy for complainants.)

Answer. He told me that he surrendered those notes to his father, given them up.

Complainant's counsel declines to cross-examine.

MARY E. NEALE.

Sworn to and subscribed before me this 10th day of April, 1866.

J. J. JOHNSON,
Special Examiner.

187 *Deposition of Richard T Neale for defendant.*

And the said Richard T. Neale being about the age of 18 years, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matter at issue in said cause, I did carefully examine said Richard T. Neale, and he did thereupon depose, testify, and say as follows :

In answer to interrogatories propounded by Samuel T. Drury counsel for defendant :

I am the son of the defendant. I was present when B. J. Neale testified. I was in the store very nearly every evening, both before and after the assignment. At night when they finished with the books I would very often put them in the chest and lock the door. I had access to everything about the store. There was no private draw in the safe. There was a draw there that I often opened. My brother B. J. Neale had access to that draw ; this draw was very seldom locked ; there was a key in the lock though.

Cross-examined.

By Mr. Webb, for complainants :

188 The assignment was about 1861; I am now nearly 18 years of age. I was not present at the assignment. I have heard my brother speak of the assignment, and when he went away he told me that he had made an assignment. I saw this draw both before and after the assignment; the condition of the draw was the same. As a general thing, as far as I can recollect, the key stood in the draw. The key was always in the draw after the assignment. As a

general thing it was in the draw before the assignment. It was not a very large safe. There only one draw in the safe, and only one key that I know of. The draw was located near to the top of the safe, and no draw below. I do not whether I ever found it locked or not. I recollect when my brother and his wife went to Charles county, Maryland. It was about 1861. I opened this draw during the time my brother was in Charles county. I do not know whether anybody was looking at me or not when I opened this draw. When my brother returned from Charles county I think the draw was not locked.

R. T. NEALE.

Sworn to and subscribed before me this 10th day of April, 1866.

J. J. JOHNSON,
Special Examiner.

189 *Deposition of John E. Neale for defendants.*

And the said John E. Neale, being about the age of years, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matter at issue in said cause, I did carefully examine said John E. Neale, and he did thereupon depose. testify, and say as follows :

In answer to interrogatories by Samuel T. Drury for complainants :

1st interrogatory. State if you please what amount of money in cash you paid to N. S. Shaw for the benefit of your son B. J. Neale?

(Objected to by Mr. Kennedy for complainants.)

Answer. Fifteen hundred and two dollars and forty-nine cents. The witness here introduced two paper-writings which said paper-writings are herewith filed and marked Exhibits "G" and "H" as evidence of said payment.

Complainant's counsel declines to cross-examine.

JOHN E. NEALE.

Sworn to and subscribed before me this 10th day of April, 1866.

J. J. JOHNSON,
Special Examiner.

190 By consent of both parties the testimony is here finally closed on both sides, and requested that the examiner send in the said testimony to court.

J. J. JOHNSON,
Special Examiner.

DISTRICT OF COLUMBIA, *County of Washington, ss:*

I, John J. Johnson, special examiner in chancery, do hereby certify, that in pursuance of the annexed notice the foregoing depositions were taken down and by me reduced to writing in the presence of and from the statements of the witnesses at the time and place designated in the caption thereof, and were then and there by me read over to the witnesses and by them subscribed in my presence and in the presence of the respective parties and their solicitors, who were then and there attending; the witnesses having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth touching the matters at issue in said cause.

I further certify that I am not of counsel for any of the parties to said cause, or in any manner interested therein.

J. J. JOHNSON,
Special Examiner.

191 *Order setting cause for hearing.—Filed* 1*st May*, '66.

B. J. NEALE *et al.*
vs.
J. E. NEALE.
} 412. Eq. Doc. 7.

Upon motion of Kennedy & Webb, esqs., solicitors for the complainants, it is, this 1st day of May, 1866, ordered by the clerk that this cause be, and hereby is, set down for immediate hearing.

Exceptions to testimony.—Filed Oct. 16, '66.

NEALE
v.
NEALE.
} 412. Equity.

At the hearing of this cause, and before the reading of the bill, the solicitor for the defendant announced to the court that he proposed, in argument, to except to portions of the testimony of the complainants, on the ground that the questions were leading, and offered to reduce to writing the special exceptions and file them in the cause; but the court ruled that no objection to the testimony could be considered at the hearing other than such as had been taken before the special examiner.

ANDREW WYLIE, *Justice, &c.*

Leave to amend.—Filed Nov. 3, '66.

NEALE
v.
NEALE.
} No. 412. Eq.

This cause having been heard, and the proceedings read and considered, it is thereupon, this 3d of November, 1866, ordered
192 that the complainants have leave to amend their bill filed in the cause, on payment of costs, the amendment to be made on or before the 15 of November, 1866.

Amended bill.—Filed Nov. 9, '66.

Benjamin I. Neale and **Mary H. Neale**,
his wife,
vs.
John E. Neale.
No. 412. In equity.

To the honorable the justice of the Supreme Court of the District of Columbia:

The amended bill of complaint of Benjamin I. Neale and Mary H. Neale, his wife, complainants, against John E. Neale, defendant, filed by leave of the court in that behalf, first had and obtained, humbly shows unto your honors that heretofore these complainants filed their bill of complaint in your honorable court, praying, amongst other things, that the said defendant be ordered and decreed to convey to your oratrix and her heirs, or to your orator in trust for her and their use, by a good and sufficient deed of conveyance, the piece or part of a lot of land and premises, particularly described and set forth in said bill, to which said said bill the said defendant answered, and other proceedings were had, as by the said proceedings now in your honorable court will appear. And reiterating, now the
193 allegations in their original bill contained, except so far as the said allegations, or any part thereof, may conflict with, or be contrary to the allegations made, and especially excepting from said reiteration such of said allegations in said original bill, or such parts thereof as profess or purport to set out and describe the promise, and the consideration thereof, averred in said original bill to have been theretofore made by the said defendant, "to give and convey unto your orator and oratrix, or one of them, in fee simple, a lot, or a part of a lot of ground" alleged in said original bill to be one, or a part of one, of several lots of ground, including lot No. 18, in square No. 517, situate in the city of Washington and District of Columbia, of which the said defendant was seized in fee simple at the time of his said alleged promise, and also especially excepting from said reiteration so much of the allegation contained in said original bill as alleges that your orator and oratrix did, on or about the 7th day of September, A. D. 1858, intermarry "partly in consideration of the defendant's said promise," your orator and oratrix humbly complaining, further show unto your honors that in the year A. D. 1858, your orator was seeking the hand of your oratrix in marriage, and that the said defendant, who is the father of your orator, knew and approved thereof, and with reference thereto, and very shortly before
194 the marriage which your orator was then seeking to effect between himself and your oratrix as aforesaid actually took place, he, the defendant, promised to your oratrix that he would give her as a bridal present one, or a part of one, of the lots, or parcels; of ground of which he was then seized in fee simple, to the end that, with the money then belonging to your oratrix, a dwelling-house might be erected thereon after her said marriage, for the use of herself and her heirs, and as a place of residence for her-

self and husband; that very soon after his said promise to your oratrix, and before her intermarriage with your orator, the said defendant repeated his said promise to your oratrix, and before her intermarriage with your orator, the said defendant repeated his said promse, in its substance and effect, if not in its very terms, to one Ann Hamilton, the mother of your oratrix, in the presence and within the hearing of your oratrix; that your orator was informed, at or about the time of the making thereof of the promise so made by the defendant as aforesaid, to your oratrix, approved thereof, and consented that the money of your oratrix, or so much thereof as might be needed for the purpose, should, after her said marriage, be applied to the erection of the said dwelling-house to the use and for the purposes aforesaid; that shortly after the marriage of your orator and oratrix, which occurred, as averred in their original bill, on the 7th day of
195 September, A. D. 1858, the defendant, mindful of his aforesaid promise, and in part performance thereof, put your orator and oratrix in possession of that certain part of the aforesaid lot No. 18, in square No. 517, which is particularly described in their said original bill, and gave the same, so far as he could give it, without executing or delivering a deed of the same, as these complainants aver, unto your or oratrix, in accordance with his promise previously made and repeated as aforesaid, and with the intent and purpose that your orator should erect thereon, for the use of your oratrix and her heirs, a dwelling-house with, or out of money which had previously belonged to your oratrix, and which had come, or were then to come. into the possession of your orator by reason only of his intermarriage with [with] your oratrix; that your orator, on behalf of your oratrix, and your oratrix herself, accepted the possession so given to them as aforesaid of the said last-mentioned piece or parcel of ground believing, at the time, that the said possession was given by the defendant in good faith, and in honest part performance of his aforesaid promise, and relying upon his said promise, and in consideration thereof, your orator, in behalf and with the consent of your oratrix, shortly afterwards, to wit, in the spring of 1859, proceeded, with the knowledge, consent, and full approval of the said defendant, to erect, and did erect, or cause to be erected, on the said last mentioned
196 piece or parcel of ground a valuable dwelling-house for the use of your oratrix and her heirs, and as a place of residence for hersel and your orator, at an expense of about five thousand dollars, and paid for the same with, or out of moneys previously belonging to your oratrix as aforesaid; that having completed the erection of the said dwelling-house, your orator, on behalf of your oratrix, and your oratrix, immediately thereafter, with the knowledge and consent of the defendant, assumed the ownership and control of it, and of the ground on which it stood, and of its appurtenances, and in the exercise of such ownership and control moved into the said dwelling-house, and resided for a time therein, and afterwards, your orator, in behaf of your oratrix, rented the said dwelling-house and premises to one Mrs. Degges, who, pursuant to the said renting, and with the knowledge of the defendant, took possession thereof, and occupied the same

as tenant to your oratrix, in whose behalf and for whose special benefit your orator acted in renting said property to said —— Degges; that during the progress of its erection, and after the erection of the aforesaid dwelling-house, and before the commencement of this suit, the said defendant, on various occasions, and to different persons, and amongst other persons to one A. L. Newton, one John Forrest, one Francis Hill, and one Mary Rider, admitted that the said dwelling-
house belonged to your oratrix, that it was built with moneys
197 that belonged to her previous to her marriage; that he, the
defendant, had given her the lot on which it was built as a bridal present; that he had not given, but intended to give, her a deed of it, &c.; also, that during the time last aforesaid, and before the commencement of the suit, the defendant often, and on different occasions, avowed to these complainants his intention to execute and deliver a deed of the said piece or parcel of ground and premises in accordance with his aforesaid promise and gift thereof. Further, your orator and oratrix show unto your honors that sometime in the year 1861 they left the city of Washington for a time, on a visit to the country, and on their return to said city they found that, in their absence, and without their consent, the said defendant had taken possession of the afore-mentioned dwelling-house and premises, and with his family, was occupying the same, and that he and his family have ever since occupied the same without the consent, and against the wishes, of your orator and oratrix, and without paying to your oratrix any rent therefor, or any money for the use and occupation thereof; and that although he has, ever since be took possession thereof as last aforesaid, promised to execute and deliver a deed for the aforesaid piece or parcel of ground and premises in accordance with his previous promise and gift thereof, yet when asked so to do
he hath refused, and still doth refuse. And further, these
198 complainants aver and claim that the aforesaid dwelling-house
and ground, with the appurtenances, belong in equity to your oratix, and that she is entitled to a conveyance of the same from the said defendant, and the rents, issues, and profits thereof since the defendant took possession thereof as last aforesaid. And in addition to the relief prayed in their original bill, your orator and oratix pray that the said John E. Neale may be made dependant hereto, and that your honors will grant unto them the United States writ of subpœna to be directed to the said John E. Neale, &c., &c. And, as in duty bound, they will ever pray, &c.

KENNEDY & WEBB,
Sol'rs for Compl'ts.

In the Supreme Court of the District of Columbia, Nov. 9th, 1866.

Summons to answer amended bill.—Issued Nov 8th, '66.

BENJ. I. NEALE and MARY E. NEALE, compl'ts,
against
JOHN E. NEALE, defendant.
} No. 412. Equity.

The President of the United States to JOHN E. NEALE, defendant:

You are hereby commanded to appear in this court, at its first special term occurring twenty days after notice of this subpœna, and answer the exigency of the bill, under pain of attachment, and such other process of contempt as the court shall award.

[SEAL.] R. J. MEIGS, *Clerk.*

Witness:
D. K. CARTTER, *Chief Justice.*

199 *Memorandum.*

That the defendant is to enter his appearance in this suit in the clerk's office on or before the special term to which this suit is returnable; otherwise, the bill may be taken for confessed.

Marshal's return.

Served the def't, and at the same time served certified copy of amended bill.

Nov. 10th, '66.

D. S. GOODING, *Marshal.*

In the Supreme Court of the District of Columbia.—In chancery.

Defendant's ans. to amended bill.—Filed Dec. 3, '66.

The answer of John E. Neale, to the amended bill of Benjamin I. Neale and Mary H. Neale, his wife.

This respondent, saving all exception to the manifold errors and uncertainties in said bill contained, for answer theneunto, or unto so much thereof as he is advised it is necessary or material for him to make answer, answering, says: He admits that the complainant, Benjamin, is the son of this respondent, and intermarried with the complainant, Mary, at the time alleged; but it is untrue that in 1858, or at any time when said Benjamin was seeking the hand of said Mary in marriage, this respondent approved thereof, and with reference
200 thereto, and very shortly before said marriage, promised
said Mary that he would give her, as a bridal present, one or part of one of the alleged lots whereof he was seized in fee simple, to the end that with the money then belonging to said Mary, a dwelling-house might be erected thereon, after her said marriage, for the use of herself and her heirs, and as a place of residence herself and husband.

And respondent shows that by the original bill in this cause it was alleged by complainants that respondent, before said marriage, and for the promotion thereof, promised and aggreed that in consideration of the same, he would give and convey one, or part of one of the alleged lots to both of the complainants, or to one or the other of of them, in fee simple, to the end that with the money then belonging, or then expected to belong, to said Mary, they might erect thereon a dwelling-house for there habitation, and that, in consideration in part of said promise, said marriage took place: and that, in part performance of said promise, respondent put the complainants in possession of the east part of lot numbered eighteen, (18.) in square numbered five hundred and seventeen, (517,) and that the complainants, confiding in said promise, accepted said pos-
201 session, and with the knowledge and consent of respondent,
and in pursuance of said promise, erected a dwelling-house on said premises for their own use and benefit, and with money belonging to said Mary, and that the complainants, after the erection of said dwelling-house, assumed the ownership thereof, and of the ground on which the same stood, all which will more fully appear by said bill; that this respondent denied by his answer as well said contracts and every of them as part performance thereof, as will more fully appear by his said answer; and that after replication, and the taking and publication of evidence, the said cause was argued at the special term of October last, and the proceedings and evidence were considered by the court, and it was thereupon held and adjudged that the complainants had failed to maintain said contracts or either of them, and that the evidence showed there was contract entered into by this respondent with the complainants, or either of them, in consideration of marriage, and that thereupon leaves to amend, on payment of all costs, was given by the court, and subsequently said amended bill was filed; and respondent is advised that said leave to amend was not within the power of the court, and was irregu-
202 lar; and he claims the same benefit by this, his answer, as if
he had specially pleaded said proceeding and adjudications in bar of the relief sought by said amended bill.

And respondent is further advised that said amended bill is not in conformity with said leave to amend, because the case now alleged is in substance and effect an entirely new case, different in its essential elements from that set up by the original bill, which alleged a contract to convey, in consideration of marriage, to complainants, or one or the other of them, for their joint benefit, whilst the amended bill alleges a promise, without consideration, to make a bridal present of real estate to said Mary, for the use of her and her heirs; and respondent claims the same benefit by this, his answer, as if he had specially demured to said amended bill, and in assuming the allegation of said amended bill to constitute in substance a mere promise without consideration, respondent adopts the only construction said allegation seems to admit of, but he excepts to said allegation as to vague and uncertain to be answered unto, and claims the same benefit as if he had demured thereto.

203 And respondent is further advised and insists, that the complainants are not entitled to the relief sought, upon a mere promise without consideration, and he claims the same benefit as if he had demurred therefor to said amended bill.

And respondent further shews, that neither he, nor any person by him authorized, did ever sign any aggreement, or other instrument in writing, for making any conveyance or gift of the alleged part of said lot numbered eighteen (18) to the complainants, or either of them, for any purpose whatsoever, and he claims the same benefit of the Statute of Frauds as if he had pleaded the same in bar to the promise alleged in said amended bill.

And the respondent further shews, that the complainants, on the
tenth of February, A. D. 1864, filed in this court their bill against
this respondent, alleging that before their said marriage, and in
consideration thereof, he promised and aggreed to give and con-
vey to them, or one of them, the said part of lot numbered eighteen,
(18,) and that, in consideration of said promise, they married, and
in part performance of said promise respondents put complainants in
possession of said premises, and that complainant, Benjamin,
204 proceeded to erect, and did erect a dwelling-house thereon of
about the value of five thousand dollars, ($5,000,) and that
being supposed in the community to be owner of said house and lot,
he undertook the business of a grocer, and obtained extensive credit,
based upon said suposed ownership; that he failed in business in the
year A. D. 1861, largely indebted, and to certain specified creditors
alone in the sum of about two thousand dollars, ($2,000,) all which
debts were incured in part upon the credit of said house and lot, and
that said house and lot belonged in equity to the complainants, sub-
ject to the payment of said debts, which said bill respondent avers
was sworn to by the complainant, Benjamin, and the contents whereof
were well known to the complainant, Mary; that after said bill had
been answered by respondent denying the equity thereof, and espe-
cially any aggreement to give and convey said part of lot, the said bill
was allowed to be dismissed for want of prosecution.

And respondent files herewith a copy of said bill marked J. E. N.,
Exhibit No. 1, as showing what pretences were set up when the same
was filed; and especially that it was not then pretended as
205 now, that there was an ante-nuptial agreement between com-
plainants, under which the money of said Mary should be ap-
plied to the erection of said dwelling-house for the use of herself and
her heirs, nor that in taking possession of said part of lot, and in
erecting said dwelling-house, and in subsequently renting the same,
the said Benjamin acted in behalf of said Mary.

And respondent shows that there are now of record on the law-side of this court unsatisfied judgments exceeding in amount three thousand dollars, ($3,000,) and being for debts contracted by said Benjamin in his business and as alleged in said bill, upon the credit of the premises now in dispute; that the said Benjamin is, and has been since he failed in business in 1861, entirely insolvent, and is indebted to divers creditors in not less than twenty-five thousand

dollars, ($25,000,) and that there never was, as respondent is informed and believes, and is prepared to prove, any ante-nuptial settlement, or agreement for a settlement, as pretended by said amended bill; and that to the property belonging to said Mary, at the marriage, the marital rights of her husband attached in full force, and that said marital rights were exerted, and said property, the same being exclusively personal, was reduced by him into possession and became his own absolutely, and was by him invested in his business, and that said pretended ante-nuptial agreement is but an invention of the
complainants whereby to secure to the complainant Mary the
206 said premises in fraud, as well of the rights of creditors as of
this respondent.

And, further answering, respondent says, that he did not favor the marriage of complainants, and in no manner promoted the same, but that said Benjamin was his son and that in his welfare and happiness respondent felt the deep interest natural to a parent; that before said marriage he did not promise to give with or without consideration, whether marriage or otherwise, the premises in controversy, nor any other property; that said Mary was entitled at the time of her marriage to certain stocks and money, the latter held by her guardian, the late Stanislaus Maury; that before and after said marriage the habits of said Benjamin were very intemperate, so that his prospects in the business in which he had been engaged since 1855, that of a grocer, were gloomy; that respondent had assisted him in said business with loans and credit from time to time; that late in 1858 and after said marriage, said Benjamin possessed himself of said stocks and invested the proceeds thereof in said business; and that respondent satisfied that the remnant of the property of said Mary would if reduced into possession by said Benjamin be likewise invested and thereby put in jeopardy and probably lost, agreed to give said Benjamin part of lot No. 16 in said square on condition
that he would waive his marital rights to said money in the
207 hands of said Murray, and allow either respondent or said
Murray to build a dwelling house on said premises, using
therefor said money, amounting to about $4,000; that said Benjamin at first objected to said condition, but subsequently consented, provided said part of lot No. 18 was given in lieu of part of lot No. 16; and respondent, having consented to this change, it was further agreed that he and not said Murray should carry out the arrangement; and that the foregoing was the only agreement or promise to give or convey the said part of lot No. 18, ever made by respondent with the complainant or either of them, and was not in writing, but verbal; that respondent thereupon employed T. H. Barron to prepare plans and specifications for the erection of said dwelling-house, and that the same were accordingly made, but that said Benjamin wholly disregarded said conditions and employed, without respondent's knowledge or consent, other parties to attend to the said erection, and drew said money in the hands of said Murray and invested the same in his business, or otherwise lost the same, and from time to time applied his own money towards the erection of said dwelling-house,

thereby taking the erection of said dwelling-house and the control of said money out of the hands of respondent, and defeating the very purpose respondent had in view when he agreed as aforesaid; that when said building was in progress and a few feet above the ground respondent told said Benjamin that he would give no deed for said part of lot No. 18, owing to the violation of said conditions, and subsequently said warning so that said Benjamin proceeded with the work at his own risk; that late in 1860 said Benjamin became utterly
insolvent and his interest in said dwelling-house, if he had
208 any, liable to the debts of his creditors; and that by such
insolvency the very result happened which respondent had by his said agreement endeavored to prevent. And respondent says that during the erection of said dwelling-house, at the earnest entreaty of said Benjamin, and upon his representation that he was in of funds to proceed farther with the work and would be ruined if it had to be stopped, respondent borrowed $2,000 from the estate of the late James Sears to enable said Benjamin to proceed with said work, and secured the same by a deed of trust on said part of lot No. 18.

And, further answering, said amended bill, respondent reiterates the averments contained in his answer to the original bill, and he denies that in part performance of the alleged promise he put the complainants in possession of said part of lot No. 18 as alleged, and gave the same as alleged unto said Mary. He further denies that said Benjamin accepted possession in behalf of said Mary, or that the latter accepted the same as alleged, or that said Benjamin, in behalf of said Mary, caused to be erected the said dwelling-house for the use of her and her heirs, and paid for the same with or out of moneys previously belonging to said Mary, or that said Benjamin after the completion of said dwelling-house in behalf of said Mary, and said Mary assumed the ownership and control of the same and of the
ground on which it stood, or that said parties moved into or
209 rented the said dwelling-house as alledged, or that in the
taking possession of said part of lot No. 18 by said Benjamin, (which your respondent admits was taken, but avers was subject to the conditions aforesaid,) or in the subsequent erection of said dwelling-house, or moving into or renting the same, the said Benjamin acted in behalf of said Mary. And, further answering, respondent says he has no recollection of the alledged admission to the parties specified, or to others, and hence denies the same, and is confident they could not have been made, as they are wholly at variance with the only arrangement entered into by him in relation to said property, which arrangement he has heretofore faithfully detailed, and are besides equally at variance with the pretensions of the bill filed herewith as an exhibit, as well as of the original bill in this cause.

And, further answering, respondent denies that, as alleged, he has ever avowed the intention to execute and deliver a deed in accordance with the alleged promise or gift. He admits that he took possession of said dwelling-house under the circumstances set forth in his answer to the original bill, and has occupied the same without paying rent therefor, but says he expended a large sum of money in rendering said dwelling-house habitable, and other sums in keeping the same in repair, and that besides said Benjamin is largely indebted to him.

And respondent further shows that, although the said Ben-
210 jamin has no legal or equitable claim thereto, he has ever been willing that the money expended by him in the erection of said dwelling-house should constitute a lien upon the premises and be repaid; but he utterly denies that said Mary has any claim, legal or equitable, to said dwelling-house or lot of ground, or that a single dollar went into the erection of said dwelling-house which had not become the absolute property of her husband; and having fully answered the said bill he prays to be hence dismissed, &c.

JOHN E. NEALE.

DISTRICT OF COLUMBIA, *County of Washington*, ss:

Be it remembered, that on this 3d day of December, A. D. 1866, personally appeared before me, the subscriber, one of the notary publics, in and for said county, John E. Neale, being duly sworn, according to law, swears that the facts and averments in the forgoing answer are true to the best of his knowledge and belief.

CHARLES WALTER, *J. P.*

[5 cent stamp. Cancelled.]

211 *Exhibit* 1.—*J. E.* N.—*Filed Dec.* 3, '56.

To the honorable the judges of the Supreme Court of the District of Columbia.—In equity:

Benjamin I. Neale, and Mary H. Neale, his wife, bring this their bill of complaint against John E. Neale, all being citizens of and residing within the city of Washington, District of Columbia, and thereupon your orators complain and aver, that during and before the year 1858, the said defendant, John E. Neale was seized [was seized] and possessed as owner in fee simple of sundry lots of ground, situate, lying and being in the said city of Washington, among other of lot No. 18, in square No. 517. That your orator Benjamin is the son of said defendant John. That in the said year 1858, your said orator being about to be married to his aforesaid wife, the said John being desirous that your said orator should marry and be settled in life, engaged, promised and agreed that if said marriage should be consummated, he the said John would, in consideration thereof, give and convey to your orators, one of them, a part or portion of said lot No. 18, in square No. 517, by a good and sufficient deed of conveyance in fee simple; and your orators aver and charge, that they did marry accordingly for and in consideration of such promise and
212 undertaking by said defendant. Your orators shew and aver that in part performance of said promise and undertaking, he, the said John, did, about the time of said marriage, which occurred on the 7th September, in the year 1858, put your orator in possession of the said lot or piece of ground so promised, viz: about 20 feet fronting on H street, on the east part of said lot, and running back

the entire depth of the same. Your orators, placing entire confidence in the aforesaid promise and undertaking of the said John, so made as aforesaid, entered upon and took possession of said piece of ground, and proceeded to erect a valuable house thereon, at an expense of about five thousand dollars, the ground itself, being at the time unimproved, was worth about one thousand or twelve hundred dollars. The parties being well known in the community, and the said John being especially well known as a man of property and in good circumstances, and your orator Benjamin being in possession of said lot, and having expended so large a sum of money in erecting a good and substantial dwelling house thereon, gave him a creditable standing in the community. Under these circumstances your orator Benjamin undertook to carry on the business of a grocer in this city,
took a store, obtained by purchase, partly for money, and in a
213 considerable degree upon credit a large stock of articles of
merchandise belonging to and suitable for the business in which he had been for some years engaged. The liberal credits which were given him, were founded upon the confidence entertained by those with whom he dealt, that he was the actual owner of the house and lot above-mentioned. The said defendant on every occasion, and these occasions were many, well knowing that your orators were in possession of said premises, erecting costly buildings thereon, reiterated his promises to execute a deed in accordance with his aforesaid promises and undertakings, but confiding implicitly in his good faith, your orators did not urge this, assured that it would be done. Your orators further shew and aver, that this state of things continued until the year 1861, he carrying on his occupation as grocer, on Louisiana Avenue, and occupying the premises on the square No. 517, aforesaid. About that time your orator was unfortunate and failed in his business; some of my creditors entertaining an equal confidence in the said defendant, as your orator continued to feel, advised your orator, in order to prevent injurious sacrifices, to assign his property to the said John, for the purpose of winding up the concern, and paying at least, if not the whole amount of their debts, a fair
proportion of the same. Your orator, Benjamin, did accordingly
214 in accordance with this advice of some of his creditors, to
whose judgment he felt himself bound to conform, make and execute to his father, the said defendant, a conveyance in bill of sale of all his stock of goods, then on hand, the accounts and debts due to him, &c., the value of which your orator aver and charge, was at least eighteen thousand dollars. In making this arrangement, your orator, Benjamin, believed and was advised that he was acting best for the interest of his creditors. And the said John, when it was adoted, solemnly promised and agreed in the presence, not only of himself but others, that he would settle up the business to the best advantage of all concerned, to collect all that he could of the debts due, and arrange as far as practicable with the creditors. At the time of making this arrangement, he, the said John, was indebted to your orator, Benjamin, in the sum of two thousand two hundred dollars, and was endorsed on the paper of said orotor, to the extent

of three thousand five hundred dollars, and he executed and deliverd to your orator his promissory notes, to the amount of twelve thousand dollars, with the understanding and agreement, that the same were to be liquidated by his payment of the debts, so due, from your said orator.

215 Your orator further avers and charges, that shortly after
making this arrangement of his affairs, your orator, Benjamin, having occasion to leave the city, deposited with his father, the said defendant, a key to a private drawer, in which were contained the aforesaid promissory notes for $12,000, with other important and valuable papers, and that upon his return he found that said drawer had been opened, all the papers, said promissory notes abstracted, with the exception only of the recepts, which your orator had given the said defendant for said notes, when they were passed to him.

Your orators further aver and charge, that said defendant has taken possession of and occupies, by himself, or others, the aforesaid house and premises, as hereinbefore described, and although frequently since, has promised to execute the deed for the same, as he had so often engaged to do, has and does whenever called upon and required to fulfill his said engagement, refused and still does refuse to perform the same. That he has also sold and disposed of the stock of goods assigned to him, as aforesaid, upon the trusts hereinbefore mentioned. Collected many of the debts, included in said assigment, retains his own promissory notes for $12,000; that he has not paid any, or a
very small part of the debts, which said assignment was made
216 and designed to secure; that he has rendered no account of
any of his acts or doings in the premises, and refuses so to do. All which actings and doings of the said John are contrary to equity and good conscience.

Your orators further aver and charge, that there are at this time, outstanding debts due and owing to sundry creditors in the said city of Washington, from your orator Benjamin, particularly that he is indebted to Edward Hall, in the sum of nine hundred and fifty dollars, with interest; to Barbour & Semmes, in about five hundred and twenty-five dollars; and to E. E. White, in the sum of four hundred twenty-four dollars; that all these debts were incurred in the course of business, in or before the year 1861, all bona fide debts, and bearing interest, each of them justly and fairly due, incurred upon the credit of the stock of goods which were in the possession of your said orator, and of the house and lot above described, of which he was the apparent and supposed owner.

Your orators aver and charge, that said defendant has had by the possession of said premises, from the rents and profits thereof, and from the stock of goods and accounts transferred to him as aforesaid,
ample means to discharge and pay each and every of said
217 debts, and that said stock and accounts were expressly placed
in his hands on the trusts aforesaid, and that unless liquidated and discharged, as hereinbefore stated, the said note of $12,000 constituted a fund for the same purpose.

Your orators aver and charge, that the said house and lot belong in equity to your orators, subject only to the payment of the debts of your said orator, and that they are entitled to a conveyance of the same, in accordance with the above stated agreement, and for an account of the rents, issues and profits thereof since the same has been taken possession of by the said defendant; that the said defendant is bound to render an account of the stock of goods, accounts, notes, judgments, &c., which were assigned to him, and placed in his hands for the purposes and on the trusts hereinbefore stated, all of which he has neglected and refused, and still persistently neglects and refuses to do, whereby your orator Benjamin is kept in the situation of a debtor, unable to discharge his obligations, to recommence business for the support of himself and family, and his creditors unable to obtain payment of their just dues.

Inasmuch as your orators, and those for whom, as well as for
themselves, are remediless in the premises, at and by the rules
218 and practice, Common Law Courts, but can only have full and
adequate relief in equity, where the specific execution of contracts can be enforced, and matters of trust are cognizable and relievable.

May it please your honors, the premises considered, to grant unto your orators the United States writ of subpœna, to be directed to the aforesaid John E. Neale, commanding him to be and appear at a day therein to be designated, before your honorable court, then and there, true, full and perfect answers to make upon his corporal oath to all the allegations and charges herein before stated; to convey to your orators a good and sufficient deed of conveyance in fee simple of the lot of ground, and premises herein before particularly described; to state when he entered upon and took possession of said premises, since the same were held and occupied by your orator, and render a fair and accurate account of the rents, issues, and profits of the same during such his occupancy; that he answer fully and distinctly whether he did not, before and at the time of the marriage of your orators, promise and agree, in consideration of such marriage, and as an inducement thereto; whether said marriage did not take
place after the making by him of said promise and agreement,
219 and whether he has not on several occasions, since the consum-
mation of said marriage of your orator, reiterated his said promises to convey by a good and sufficient deed for said premises or what were the nature and terms of his said promises and undertakings. Whether your orators with his full knowledge, consent and approbation did not enter upon and take possession of said premises and lot of land. Whether the same was not then unimproved and vacant; what was its then actual and what was its assessed value. Whether your orator, Benjamin, did not shortly after his said marriage, or how soon after, construct and build a dwelling house upon the said lot of ground, with the full knowledge and consent of said defendant, and how long did your orators continue to occupy and possess the same. Who, during said occupancy, paid the taxes assessed on said premises. Whether your orator, Benjamin, did not embark in the grocery business as hereinbefore alleged, and open and keep a store

on Louisiana avenue. Whether he did not become unfortunate in the same and fail. Whether your orator did not assign, transfer and convey to him the said defendant, his stock of goods, books of account, judgments and assets, and that he produce the original or authenticated copy of the said bill of sale, assignment and con-
220 veyance. Whether the said defendant did not appear on said books to be indebted to your said orator and to what amount, for what sum was said defendant at the date of said bill of sale or assignment responsible as endorser for said orator. Whether the said bill of sale or assignment was not made by and with the consent of sundry of the then creditors of said orator, whether it was not made with the design and intention that said defendant should receive the same in trust for the purpose of disposing of the property therein conveyed and collect the debts due, and appropriate the same to the payment and discharge of the debts due by your orator, or that he state and set forth what were the objects and trusts upon which he the said defendant accepted the said bill of sale and assignment. Whether he did not execute and deliver to your said orator the promissory note or notes, for $12,000, and whether the same were not so executed and delivered and received with the understanding and agreement that they were to be liquidated and discharged by the payment of the debts due by your said orator to his creditors, or upon what terms and conditions. Whether he, the said defendant, did not enter upon and take possession of the store occupied by your said orator, his books of account, vouchers, evidences of debts due to him, proceed to dispose of said goods, collect said debts.
221 Whether he has to any and what amount and at what times he has realized and received money or other things from this source; how he has disposed of the same, and whether he has ever and when, and to whom rendered any account of his acts and doings in the premises. Whether he has paid any of the debts due by your orator, and to whom, to what amount and when. Whether he did not at, or about the time of said assignment and bill of sale, execute and deliver his promissory note for the sum of $12,000 as herebefore charged. Whether the same, or any part thereof, have ever been paid, when and to whom. Whether the same ever after came into his possession, or under his control, when and how; where are the same or any or either of them at this time; and if they, any or either of them are now in his possession, or under his control, that he may produce them.

And that your orator may have such other and further relief in the premises, as to your honors may appear equitable and agreeable to equity and good conscience.

RICH'D S. COXE,
Solicitor and of counsel with complainant.

DISTRICT OF COLUMBIA, *City of Washington, ss:*

222 Be it remembered, that on this tenth day of February, 1864, personally appeared before me, the subscriber, one of the notary publics, in and for said county, Banjamin I. Neale, one of the

complainants in the forgoing bill in equity, who, being duly sworn according to law, affirms and says, that the allegations and averments in said bill contained, so far as they purport to be of his own knowledge are true, and so far as they purport to be derived from others, he believes them to be true.

[SEAL.] THOMAS C. DUNN.
Notary Public for the County of Washington, District of Columbia.

[Stamp.]

A true copy.

R. J. MEIGS, *Cl'k.*

Feb'y 23, 1864.

In the Supreme Court of the District of Columbia.

Replication to Def'ts an's to amended bill.—Filed Dec. 17, 1866.

Benjamin I. Neale and Mary H. Neale, his wife.
vs.
John E. Neale.
No. 412. In equity.

These repliants, saving and reserving to themselves all and all manner of advantage of exception, which may be had and taken 223 to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendant to their amended bill of complaint, for replication thereunto say, that they do and will aver, maintain, and prove their said amended bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, erasive, and insufficient in the law to be replied unto by these repliants; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things these repliants are ready to aver, maintain, and prove, as this honorable court shall direct, and humbly pray as in and by their said amended bill they have already prayed.

KENNEDY & WEBB,
Sol'rs for Repliants.

Order setting cause for hearing.—Filed Feb'y 5, '67.

Neale *et al.*
v.
Neale.
412.—Equity. Dock. 7.

On motion of Messrs. Kennedy & Webb, sol'rs for comp'ts, it is, this 5th day of Febuary, 1867, ordered that the above cause be, and hereby is, set down for hearing.

224 In the Supreme Court of the District of Columbia.

BENJ. I. NEALE and MARY H. NEALE
vs.
JNO. E. NEALE.

DISTRICT OF COLUMBIA, *County of Washington*, *ss*:

Be it remembered, that on this 14th day of March, A. D. 1867, I, John J. Johnson, an examiner in chancery, did cause to be personally present at my office, in the city of Washington, in said District, John E. Neale, to testify on the part and behalf of the defendant in a certain cause now depending in the Supreme Court of the District of Columbia, wherein Benjamin I. Neale and wife are complainants, and John E. Neale defendant.

JNO. J. JOHNSON,
Examiner in Chancery.

Deposition of Jno. E. Neale for defendant.

And the said John E. Neal, being of lawful age, and being by me first duly sworn to testify the truth, the whole truth, and 225 nothing but the truth, touching the matter at issue in said cause, I did carefully examine said John E. Neale, and he did thereupon depose and testify as follows:

In answer to questions put by E. C. Morgan, counsel for defendant:

Question. Is there any suit pending now by Brown & Palmer, in the Supreme Court of the District of Columbia, against you, alleging that you have funds in your hands belonging to B. I. Neale, one of the complainants, in connection with this failure in business heretofore spoken of?

(Objected to by Mr. Webb, for complainants.)

Answer. Yes.

Question. When was the notice of it served on you?

Answer. On the 31st of October, 1865.

Question. Is it an attachment suit, and are you garnisheed in the suit?

Answer. Yes, sir.

Question. Is the suit now pending?

Answer. Yes, sir: it is.

Question. For how much?

Answer. Five hundred and ninety-four dollars and seventy-one cents, with interest from 1st February, 1861, and costs.

Question. How much does it appear by your son's books that he failed for?

(Objected to by Mr. Webb, for complainants.)

226 Answer. According to his own showing, twenty-six thousand four hundred and fifty-seven dollars and forty-nine cents.

Question. Is there any funds in your hands belonging to B. I. Neale?

Answer. No, sir; there is no funds in my hands belonging to B. I. Neale.

Question. What are the amounts of the judgments against B. I. Neale, now standing in the Supreme Court of the District of Columbia?

(Objected to by Mr. Webb, for complainants.)

Answer. Three thousand six hundred and eight dollars and ninety-five cents, independent of the interest.

Cross-examined.

By Mr. Webb, for complainants:

Question. Is the attachment about which you have testified on a judgment?

Answer. Yes; on a judgment against B. I. Neale.

Question. What is the date of the judgment?

Answer. 30th September, 1865, interest from 1st February, 1861.

Question. Have you been served with interrogations?

Answer. I have, sir; and answered them.

Question. Where is the attachment suit now?

227 Answer. It is in court, and I think it is going to be tried.

Question. Where did you get the statement of the amount of your son's indebtedness at the time of his failure, to which you have testified?

Answer. His own statements, made to me in writing, put down in figures. I get it from his books.

Question. Has that book containing this statement been produced in this case before?

Answer. Yes, it was.

Question. Where did you obtain the amount of the judgments against your son?

Answer. Off the records at court.

Question. Did you examine the records yourself, or did you get a certified abstract?

Answer. I did not examine them myself. I have not a certified abstract.

Question. Is the Brown & Palmer judgment among that list of judgments?

Answer. Yes, sir.

JOHN E. NEALE.

228 Sworn to and subscribed before me this 14th day of March, A. D. 1867.

J. J. JOHNSON,
Examiner in Chancery.

The defendant through his counsel here closes.

J. J. JOHFSON,
Examiner in Chancery.

DISTRICT OF COLUMBIA, *County of Washington, ss:*

I, John J. Johnson, examiner in chancery, do hereby certify that in pursuance of the annexed notice the foregoing deposition was taken down and by me reduced to writing, in the presence of, and from the statements of the witness, at the time and place designated in the caption thereof, and was then and there by me read over to the witness, and by him subscribed in my presence, and in the presence of the solicitors of the respective parties, who were then and there attending, the witness having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters at issue in said cause.

I further certify that I am not of counsel for any of the parties to said cause, or in any manner interested therein.

J. J. JOHNSON,
Examiner in Chancery.

229 In the Supreme Court of the District of Columbia this 1st day of May, 1867.

Order certifying cause to general term.—Filed May 1, '67.

BENJAMIN I. NEALE and MARY H. Neale, his wife,
vs.
JOHN E. NEALE.
} No. 412. Equity. Docket 7.

This cause coming on to be heard, it is by the court ordered that the same be, and it is hereby, certified to the court in general term to be heard on the first the said term.

A. B. OLIN.

In the Supreme Court of the District of Columbia this 13th day of June, 1867.

Interlocutory decree in gen'l term.—Filed 13 *June,* '67.

BENJAMIN I. NEALE and MARY H. Neale, his wife,
vs.
JOHN E. NEALE.
} No. 412. Equity. Docket 7.

This cause having been certified from the Supreme Court of the District of Columbia, sitting in equity at a special term, to the court in general term, under the act of Congress, and having been, by said court in general term, heard upon the original and amended bills, the exhibits, and the testimony taken thereunder, and fully argued by counsel for both parties, it is by the court, this 13th day
230 of June, 1867, ordered, adjudged, and decreed that the said John E. Neale, the defendant, shall make, execute, acknowledge, and deliver to William B. Webb, esq., a good and sufficient

deed of the real property in the proceedings in the said cause mentioned, to be held by the said William B. Webb, as trustee, for the sole use and benefit of the complainant, Mary H. Neale, freed and forever discharged from all liability for, or responsibility on account of the debts of her said husband, the complainant, Benjamin I. Neale, or any future husband she may have; and it is further ordered that the said cause shall be referred to William B. Webb, as a special master in chancery, to prepare and report to the court a deed with apt words to carry into effect the foregoing provisions of this decree; and it is further ordered that the said cause shall be referred to the auditor with directions to that officer to ascertain and report to the court such sum of money as to him, upon investigation, shall appear to be a fair and just compensation for the use and occupation of the said real property since the filing of the original bill in this cause. And from this decree the defendant prays an appeal to the Supreme Court of the United States.

By order of the court.

In the Supreme Court of the District of Columbia this 13th day of June, 1867.

Report of the special master in chancery.—Filed 13 *June*, '67.

NEALE
vs. } No. 412. Equity. 7.
NEALE.

231 William B. Webb, the special master in chancery, appointed by the court sitting in general term on the 13th day of June, 1867, by its decree made on that day, respectfully reports that he has prepared, in accordance with said decree, a deed of the real property in said proceedings mentioned, and he annexes it hereto as part of this his report, marked "W. B. W., A."

All of which is respectfully submitted.

W. B. WEBB, *Special Master.*

Exhibit "W. B. W., A."—Filed 13 *June*, '67.

This indenture, made this day of , in the year of our Lord one thousand eight hundred and sixty-seven, between John E. Neale, of Washington city, in the District of Columbia, of the first part, and William B. Webb, of the same place, of the second part.

Whereas, by a decree of the Supreme Court of the District of Columbia, dated the 13th day of June, 1867, and passed in a cause depending in said court, and numbered 412, in equity, docket 7, wherein Benjamin I. Neale and Mary H. Neale are complainants and the said John E. Neale is defendant, the said John E. Neale was ordered and directed to make, execute, acknowledge, and deliver to the said party hereto of the second part, in trust to hold the same as trustee for the sole use and benefit of the aforesaid Mary H.

232 Neale, freed and forever discharged from all liability for and responsibility on account of the debts of her said husband and the said Benjamin I. Neale, or any future husband she may have, the part of lot of ground and premises, with the appurtenances, hereinafter particularly set forth and described. Now, therefore, this indenture witnesseth: That the said John E. Neale, for, and in consideration of, the premises, and for the purpose of fully carrying into effect the provisions of the aforesaid decree, and in further consideration of the sum of ten dollars current money, to him in hand paid by the said party hereto of the second part, hath given, granted, bargained, and sold, aliened, enfeoffed, conveyed, and confirmed, and by these presents doth give, grant, bargain, and sell, alien, enfeoff, convey, and confirm to and unto the said party of the second part, and his heirs and assigns, forever all and singular that certain piece or parcel of ground situate, lying, and being in the said city of Washington, and being part of lot numbered eighteen, (18,) in square numbered five hundred and seventeen, (517,) as the same are laid down and described upon the plat or plan of the said city, the same being more particularly described as follows, that is to say: beginning for said part of lot at a point five (5) feet east from the southwest corner of said lot 18, and running thence north one hundred (100) feet; thence east twenty-three feet four and one-half inches, (23.4½,)
233 thence south one hundred (100) feet, and thence west twenty-three feet four and one-half inches (23.4½) to the place of beginning, together with all and singular the buildings, improvements, ways, rights, tenements, and hereditaments unto the same belonging or in any way appertaining, and all the estate, right, title, and interest of the said party hereto of the first part, of, in, and to the same, both at law and in equity; to have and to hold the aforesaid piece or parcel of ground and premises with the appurtenances, to and unto him, the said party of the second part, and his heirs and assigns, and to and unto his and their sole and separate use, benefit, and behoof forever. In trust, nevertheless, for the sole and separate use of the aforesaid Mary H. Neale and her heirs, freed and forever discharged of and from all liability for or in any way on account of the debts or undertakings of her husband, the said Benjamin I. Neale, or of any future husband which she may have; and in further trust to receive the rents, issues, and profits arising from the said piece or parcel of ground and premises, and the same to apply to the sole and separate use and benefit of the said Mary H. Neale, freed and discharged from all liability for or on account of her said husband, and freed from all interference or control on his part or behalf.

In testimony whereof, the said John E. Neal has hereunto
234 set his hand and affixed his seal the day and date first hereinbefore written.

[SEAL.]

Signed, sealed, and delivered in presence of—

DISTRICT OF COLUMBIA, *County of Washington:*

I, , do hereby certify that John E. Neale, party hereto to a certain deed bearing date the day of , A. D. 1867, and hereto annexed, personally came before me, at my county aforesaid, he being well known to me to be the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand, seal, this day of , A. D. 1867.

235 In the Supreme Court of the District of Columbia.

Final decree of court in general term.—Filed 13 *June,* '67.

BENJAMIN I. NEALE and MARY H. Neal, his wife, *vs.* JOHN E. NEAL. } Equity. No. 412. Docket 7.

William B. Webb, who was appointed by the court special master in chancery, with instructions to draft and report the form of a deed to be executed and delivered by the defendant in this cause for the piece or parcel of land mentioned and described in the proceedings in said cause, agreeably to the interlocutory decree passed therein on the thirteenth day of June, 1867, having discharged the duty imposed upon him by the said appointment by reporting to the court a paper-writing marked "W. B. W., A.," purporting to be a deed prepared in blank in accordance with the aforesaid interlocutory decree, it is thereupon by the court, sitting in general term and in equity this 13 day of June, 1867, further ordered, adjudged, and decreed that the said defendant John E. Neale, do and shall duly execute and acknowledge the said paper-writing marked "W. B. W., A.," as aforesaid, and afterwards deliver the same to the grantee therein named, as and for his, the said defendant's, deed of and for the piece or parcel of land therein mentioned and described, with the appurtenances thereto belonging; and that the said defendant sur-
236 render the immediate possession of the said premises to the said grantee, to be held by him and his heirs and assigns in and upon the trusts mentioned and set forth in the said paper-writing or deed; and that the said cause be and the same hereby is referred to the auditor of this court with instructions to ascertain and report to this court the amount due from the said defendant, John E. Neale, to Mary H. Neale, one of the complainants in said cause, for his, the said defendant's, use and occupation of the said parcel of land and premises from the day the original bill in said cause was filed until the day that he, the said defendant, surrender the possession of the said piece or parcel of land and premises in obedience to this decree. And from this decree also the defendant prays an appeal to the Supreme Court of the United States.

By order of the court,

237 In the Supreme Court of the District of Columbia, June 22, 1867.

Appeal bond.—Filed June 22, '67.

BENJAMIN I. NEALE and MARY H. Neale, his wife, compl'ts, *vs.* JOHN E. NEALE, defendant.	412. Equity. Docket 7.

The defendant, principal, and James W. Anderson, William H. Clagett, and Michael P. Callan, his sureties, acknowledge themselves to be jointly and severally indebted to the complainants in the sum of three thousand dollars, for the payment of which they bind themselves, and each of them, their and each of their heirs, executors, and administrators. Witness their hands and seals the day and year aforesaid.

Whereas, the defendant has prayed and obtained an appeal from the decree pronounced by the Supreme Court of the District of Columbia in the above-entitled cause on the 13th day of June, 1867:

Now, if he prosecutes said appeal with effect in the Supreme Court of the United States, to which court his said appeal has been prayed and granted, then this obligation shall be of no effect, otherwise it shall bind the said principal and his sureties to abide by and perform the decree of the said Supreme Court of the United States.

238 Witness the hands and seals of the said parties.

[SEAL.] JOHN E. NEALE.
[SEAL.] J. W. ANDERSON.
[SEAL.] W. H. CLAGETT.
[SEAL.] M. P. CALLAN.

Witness as to J. W. A.:
T. H. PARSON.
J. F. CALLAN.

Approved and ordered to operate as a supersedeas.

ANDREW WYLIE,
A Justice of Sup. C't of D. C.

Order requiring add'l bond.—Filed 15 *Nov.*, '67.

BENJAMIN I. NEALE and MARY H. Neale, his wife, *vs.* JOHN E. NEALE.	No. 412. Equity. Docket 7.

On motion of complainants, by their attorney, Mr. Kennedy, it is ordered that the penalty of the appeal bond of the defendant be increased to six thousand dollars.

In the Supreme Court of the District of Columbia, November 22 1867.

Additional bond--Filed Nov. 23, '67.

BENJAMIN I. NEALE and MARY H. Neale, his wife, complainants, *vs.* JOHN E. NEALE, defendant.	412. Equity. Docket 7.

239 The defendant, principal, and M. P. Callan and John Van Riswick, his sureties, acknowledge themselves, jointly and severally, indebted to the complainants in the sum of three thousand dollars, for the payment of which they bind themselves and each of them, their, and each of their heirs, executors, and administrators. Witness their hands and seals the day and year aforesaid.

Whereas, the defendant has prayed and obtained an appeal from the decree pronounced by the Supreme Court of the District of Columbia in the above-entitled cause on the 13th day of June, 1867; and, after giving bond to prosecute said appeal in the penalty of three thousand dollars, on the 22d of June, 1867, has been ordered to give one in the additional penalty of three thousand dollars, so as make the penalty six thousand dollars in the whole: Now, if he prosecutes his said appeal with effect, or if he fail, pay all damages and costs, then this obligation shall be of no effect, otherwise it shall be of full force and effect.

[SEAL.] JOHN E. NEALE.
[SEAL.] M. P. CALLAN.
[SEAL.] JOHN VAN RISWICK.

Witness to J. E. N. and M. P. C.:
JNO. F. CALLAN.

The foregoing bond is hereby approved this 23d day of Nov., A. D. 1867.

D. K. CARTTER, *Ch'f Justice.*

To the Supreme Court of the United States.

JOHN E. NEALE, *Appellant,*
vs.
BENJAMIN J. NEAL AND
MARY H., HIS WIFE.
No. 162, Dec. 7, 1869.

Appeal from the Supreme Court of the District of Columbia.

Brief for Appellant.

On the 29th of March, 1865, Benjamin J. Neale and Mary H. Neale, his wife, the appellees, filed their bill against John E. Neale for the specific performance of an alleged contract for the conveyance of part of a lot of ground in the city of Washington, in this District.

The bill (Record, 1) alleges that on and before 1858 the defendant was seized of sundry lots of ground in said city, and that in said year, when Benjamin J. Neale, the son of the defendant, was seeking in marriage his said wife, the defendant encouraged said intermarriage, and for the promotion thereof "*promised and agreed that if the same should be consummated he, the defendant, in consideration thereof, would, by a good and sufficient deed of conveyance, give and convey one or a part of one of the aforesaid lots of ground of which he was then seized and possessed to your orator and oratrix, or to one of them, in fee simple, to the end that with money then belonging or expected to belong to your oratrix, they might erect thereon a dwelling-house for their habitation and home.*"

The bill further alleges that, relying upon said promise, and partly in consideration thereof, the complainants intermarried on the 7th of September in said year, and that subsequently the defendant, "in part performance of his aforesaid promise and agreement," put the complainants in possession of part of lot 18, in square 517, and that thereupon the complainants proceeded to improve, and did improve, the premises by the construction of a dwelling-house thereon at the cost of about $4,000, and paid for the same out of moneys which had come into the possession of Benjamin by reason of his said intermarriage.

The answer (Record, 5) denies the alleged promise, as well as that the complainants intermarried in consideration thereof; and further, that the defendant, in pursuance of said promise, put the complainants in possession of the premises.

The answer further sets forth that after the intermarriage of the complainants the defendant, aware that the habits of his son were very intemperate, and wishing to secure to the daughter in law and her children certain moneys then in the hands of her guardian and not reduced into possession of her husband, and satisfied that said moneys, if paid to the son and invested in his business, (in which he subsequently failed,) would be placed in jeopardy, agreed that a dwelling-house might be erected on the premises in question with said moneys, provided the son would abandon his marital right to the same, and said moneys should not be reduced into possession by him, but should be invested in said dwelling-house by the defendant or said guardian for the above purpose, to which condition the son assented, and entered into possession of the premises, but that the son subsequently violated said agreement by reducing said moneys into possession and investing the same in his business.

The original answer, it appears, was lost, but by agreement of counsel another was substituted. (Record, 7.)

On the 17th of June, 1865, the replication was filed. (Record, 7.)

The evidence taken in the cause is very voluminous, (Record, 8 to 78,) and a very small portion has any relation to this appeal.

Benjamin J. Neale, complainant: Before the marriage the defendant agreed to "give my wife the east part of lot 18, in square 517, in consideration of my putting up a house with my wife's money thereon and for her benefit," and I, acting in her behalf, accepted the proposition. (Record, 9, 10.)

The complainant further swears that defendant subsequently in August, 1858, repeated the said offer to the intended wife, and that she accepted it. (Record, 10.)

Mary H. Neale, the other complainant: About three or four weeks before the marriage the defendant "told me that he would give her a lot for a bridal present, and that he *wanted* my husband to put up a fine house with my means in case of any accident in his business, with my means for my benefit." (Record, 21.)

Francis H. Hill: Had a conversation with defendant after the failure in business of the son, in which defendant told me that he "was holding on to the house until the money could be paid for which he was endorser, and when that was done he intended to make the property over to Mrs. Neale and children, so that her husband could not use it, the house being built with her money." (Record, 24.)

A. L. Newton: Conversation with the defendant subsequent to the failure, in which he said he had given the lot to his son's wife as a bridal present, and had not given a deed, but had intended to do so, and that the house was built with funds held in trust by Mr. Murray for the wife. (Record, 26.)

Jane Harris: Conversation with defendant about the time of the commencement of the building. "Defendant told me that he had not the ready money to give his son, but had given him the ground as a present."

Henrietta J. Kennedy: In the latter part of August or the 1st of September, 1861, heard Mrs. Neale (the wife of defendant) say in his presence that they had taken possession of Mary J. Neale's house to prevent it from being taken by the Government for the use of the soldiers. (Record, 28.)

Thomas L. Noyes: Before the marriage the defendant stated, in conversation, that he was about to give to his son and daughter in law a lot of ground, and that he would take care that the money received by her should be expended in that way by erecting a house, it being his intention or determination that no part of that money should be invested in the store." "The defendant said he was building this house for his son Ben.; that it was to be paid out of the money his son received by his marriage, reiterating what he had formerly told me of his determination not to permit any of that money to be sunk in the store that was then carried on by the son." (Record, 29.)

John Forrest, after the marriage, had several conversations with the defendant. In the first he said something about a lot he was going to give his son's wife. When the house was about a story high defendant asked me "if I would not go up and see young Ben's house;" at another time when the roof was on, defendant and his wife came into the house where I was and both made remarks as to "what a fine house Ben had put up." (Record, 30.)

Edward Sims: When the house was going up I had a conversation with defendant, who spoke of Mr. Dimmetry passing by Ben's house and admiring it, and wanting to know if it would be for rent, but that defendant had told him, (Dimmetry,) that it was not for rent, that it was Ben's house. (Record, 31.)

Ann Hamilton: Am the mother of the complainant, Mary H. Neale; about three months before the marriage the defendant came to my house and said his son was to be married to my daughter, and that "he had no money to give my daughter as a bridal present, but he would give her the lot to build on." "He remarked, if I did not think it was better to give her the lot as a bridal present as he had no money to give her." (Record, 32.)

Elijah Edmonston: On one occasion passing along H street about commencement of building, I had a conversation with the defendant who said his son was going to build a very fine house there. I said I would advise you to build two houses instead of one. He replied "it will cost him nothing for the lot as I intend to make him, her, or them, I do not recollect which, a present of the lot. I do not recollect any other conversation that occurred. In the same conversation I remarked that he had better build two houses, one for his son to live in and the other to rent. The defendant replied that I have made him, her, or them a present of the lot." (Record, 32, 33.)

James W. Sears: Has been present at house of defendant at parties. Has heard him say he had given *them* a lot. (Record, 33.)

Johnson Elliott: After marriage defendant told me that he had given the lot to his son; I have heard from both complainants and defendant that the house was built by Ben with money he received from his wife. (Record, 34.)

Mary Rider. Have lived with the complainants as servant—lived with them about two months before they went to the country, (1861.) Heard the defendant say Mary J. Neale built the house and he gave the lot to build it on. Was a slave when I lived with complainants; do not know my age—suppose I am over fifty. (Record 35, 36.)

The foregoing depositions are referred to for the purpose of shewing how utterly unsupported by the evidence is the contract set up by the bill.

The contract is to convey, *in consideration of marriage*, to *both* the complainants or *one* or the *other* of them.

Neither complainants nor any witness swears to any such contract.

On the 1st of May, 1866, on motion of the Solicitors of the Complainants, the cause was set for hearing. (Record, 78.)

The cause was heard at October Term, 1866, and held under consideration until the 3d of November, 1866, when the following order was passed by the Court:

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NEALE }

This cause having been heard, and the proceedings read and considered, it is thereupon, this 3d of November, 1866, ordered that the complainants have leave to amend their bill filed in the cause, on payment of costs, the amendment to be made on or before the 15th of November, 1866.

It will be observed that this order did not permit the withdrawal of the replication to the original bill.

On the 9th of November, 1866, the complainants filed what is styled an amended bill. (Record, 79.)

This bill in express terms abandons the case as alleged in the original bill, under which the issues were then pending and undetermined, and sets up an entirely new case. So far from professing to amend the case then pending it begins by expunging all of the old case save so far as consistent with the new.

1. It "reiterates the allegations in their original bill contained except so far as the said allegations or any part thereof may conflict with or be contrary to the allegations herein made, and especially excepting from said *reiteration* each of the allegations in said original bill or such parts thereof as profess or purport to set out and describe the promise and the consideration thereof averred in said original bill to have been theretofore made by said defendant," "to give and convey unto your orator and oratrix, or one of them in fee simple a lot or part of a lot of ground," &c. And again, "and also especially excepting from said reiteration so much of the allegation contained in said original bill as alleges that your orator and oratrix did on or about the 7th day of September, 1858, intermarry *partly in consideration* of said promise." (Record, 79.)

So that the very foundation of the original bill, that is the promise to give and convey in consideration of intermarriage and the fulfilment of said consideration by the intermarriage is "especially excepted," from the case made by the amended bill.

2. The amended bill then goes on to allege, (Record, 79,) that before the intermarriage the defendant "promised to

your oratrix, that he would give her as a bridal present one or part of one of the lots or parcels of ground of which he was then seized in fee simple, to the end that with the money *then belonging to your oratrix*, a dwelling house might be erected thereon after said marriage *for the use of herself and her heirs*, and as a place of residence for herself and husband; that very soon after his said promise to your oratrix, and before her intermarriage with your orator, the said defendant repeated his said promise to your oratrix, and before her intermarriage with your orator, the said defendant repeated his said promise, in its substance and effect, if not in its very terms, to one Ann Hamilton, the mother of your oratrix, in the presence and within the hearing of your oratrix; that your orator was informed, at or about the time of the making thereof of the promise so made by the defendant as aforesaid, to your oratrix, approved thereof, and consented that the money of your oratrix, or so much thereof as might be needed for the purpose, should, after her marriage, be applied to the erection of the said dwelling-house to the use and for the purposes aforesaid."

By the original bill the promise was not alleged to have been made to the intended husband and wife; neither was the promise alleged to be for her exclusive benefit as here, but "to the end that with money then belonging or expected to belong to your oratrix, *they* might erect thereon a dwelling-house for their habitation and home." (Record, 2.)

Neither did the original bill set up as here *any parol antenuptial settlement.*

3. The amended bill then goes on to allege that the defendant put both the complainants into possession, and thereby gave the lot to the oratrix, with the intent and purpose that the orator should erect thereon a dwelling-house for the use of the wife and her heirs, and with moneys protected by the said antenuptial marriage settlement; and that the orator accepted the possession "in be-

half of your oratrix," and afterwards in behalf and with the consent of your oratrix, "erected the dwelling-house in question, and upon its erection "your orator, in behalf of your oratrix," assumed possession and control, &c. (Record, 80.) The original bill alleged that possession was given to *both* and accepted by *both*, and the house erected by the husband with moneys which had been reduced into possession by him. (Record, 2.)

The whole scheme of the original bill was for the recovery of property in which a married woman might have an interest subject to the marital rights of her husband, and not to set up a claim adverse to said marital rights.

The amended bill then prayed process which was duly issued and served. (Record, 81 & 82.)

The defendant's answer was filed Dec. 3, 1866. (Record, 82.)

It excepts to the order allowing leave to amend as void and irregular. (Record, 83.)

It further excepts to said amended bill as not in conformity with the order allowing leave to amend because the amended bill sets up a new and entirely different case, &c. (Id.)

It then proceeds to answer the amended bill and fully denies the equity thereof.

On the 17th of December, a Replication was filed to this answer. (Record, 92.)

The cause thus presented two sets of issues under the two replications.

No evidence was taken until the 5th of February, when the cause was set for hearing by the complainants' solicitors. (Record, 92.)

The cause having been certified into the General Term a decree was rendered on the 13th of June, 1867, requiring the defendant to convey the premises in controversy to a trustee *for the sole use and benefit* of the complainant Mary H. Neale, and freed and forever discharged *from all responsibility for the debts of her husband*, Benjamin J. Neale, or any future husband and referring the cause to a special master for the preparation of a proper deed, and further referring it to the Auditor for an account of rents and profits. (Record, 96.)

Upon the coming in of the report of the master with the draft of a deed a further decree was entered adjudging that the defendant execute the deed so reported. (Record, 98.)

From both decrees the defendant appealed to this court. (Record 96, 98.)

On behalf of the appellant it will be contended—

I. That the pleadings and evidence under the original bill did not warrant the decree of the Court below.

II. That the order allowing leave to amend could not and did not authorize the filing of the amended bill.

III. That under the amended bill the decree is not supported by the evidence.

As to the first proposition:

To take a case out of the Statute of Frauds upon the ground of part performance, it is not only indispensable that the acts done should be referable exclusively to the parol contract, but the contract must also establish by competent proofs to be *clear*, *definite*, and *unequivocal in all its terms*. If the terms are *uncertain* or *ambiguous*, or not made out by satisfactory proofs, a specific performance cannot be decreed.

West vs. Thompson; 9 Pet., 204.
Colson vs. Thompson; 2 Wheat., 336.
2 Story's Eq. Jur. ss., 764, 766, 762, 167.
Phillips vs. Thompson; 1 John., Ch. 131.
Parkhurst vs. Van Cortland; Id. 273.

Now what are the terms of the contract as averred in the original bill? They are to give and convey, in consideration of the marriage of complainants, to *both* of them, or *one* or the *other* of them, *one* or *part* of *one* of the lots whereof defendant was seized, to the end that with money then belonging or expected to belong to the oratrix, *they* might erect thereon a dwelling-house for their habitation and home. How can such a contract be specifically performed?

King vs. Thompson; 217, 218.

Here are three distinct and inconsistent contracts averred in the bill, and each alleged to have been made in reference to real estate, but to what real estate is left wholly uncertain by the contract.

If the contracts be regarded as in the alternative, which is not alleged, to which of the three parties belonged the election as to how it should be executed, and when was that election to be exercised?

The case of Cox vs. Cox, decided by the Supreme Court of Pennsylvania and reported in 2nd Casey, 375, (26 Penn. State Reports,) was where a party claimed substantially specific performance under two incongruous titles. The Court say, page 382: "Such a claim, if distinctly set out, would be rejected on first presentation. It is only when its incongruity is covered up in a mass of conflicting evidence that it could be suffered to pass. The essential grounds of his claims are evidence that he has no honest claim at all. If this land was given to him, or bought for him with his money, he must have known it, and which way it was. To say both is false—to say that he does not know which—is to admit that neither is true. In his own opinion one of them may be true, and only one, and on that he must rely. Equity does not lend its aid to experiments on legal titles, in favor of those who can present no distinct and consistent claim. It sanctions no war of which the manifesto is false on its face."

Here we have two parties who unite in the averment that there was no definite contract, either in respect to parties or subject matter, who yet pray specific performance.

The averment of such a contract is simply an admission on the record that deprives the parties of any relief.

So much for the pretensions of the complainants. What is the evidence adduced by them? It will all be found, Record 8 to 37.

The complainant, Benj. J. Neale, swore to a contract different from either set up by the bill. He swore that defendant agreed to give the lot to the wife *in consideration* that he would build a house for her benefit thereon.

He had previously sworn to a bill in equity, averring that the gift was to him and his wife. (Record, 18.) A copy of this bill is filed with the answer to the amended bill. (Record, 87.) Besides, it is not pretended that the consideration alleged by him was unperformed. On the contrary, he made the money of his wife his own, as the evidence shows.

The other complainant contradicts her husband, swearing to a contract different from that stated by him, and from either of those set up by the bill.

The above depositions are especially valuable as containing the aptest illustrations of leading questions. Of the other witnesses, exactly a dozen in number, five (Hill, Newton, Henrietta J. Kennedy, Ann Hamilton, and Mary Rider,) swear to declarations indicative of a gift to the wife; and five (Jane Harris, Forrest, Sims, Edmonson, and Elliott,) to declarations in favor of a gift to the husband; and two (Noyes and Sears) in favor of a gift to both, and all swear to casual conversations occurring upwards of six years before, and in which they had no special interest.

Neither of the complainants, nor any witness swears to the consideration of marriage averred in the bill. All these witnesses are put forward by the complainants as entitled to credit.

It must then be apparent that the evidence of the complainants leaves the contract sought to be specifically enforced in the same doubt and obscurity as the averments of the bill.

This evidence is contradicted by that of the defendant, (Record, 37–77,) to which it is unnecessary particularly to refer, as the evidence of the complaimants disposes effectually of their case.

As to the second proposition that the amended bill was not authorized by the order of the 3rd of November, 1866. Publication had passed, and the cause had been set down for hearing, and had been heard.

The order was in plain violation of the 29th Rule of Equity practice prescribed by this Court, and in force in the Court below. There was neither motion, nor petition, nor notice to the opposite party, nor any proof of the facts required by the Rule when the cause has proceeded no farther than replication.

A bill cannot "be amended after publication in any other respect than by making parties, and no new change can be introduced, or material facts put in issue, which was not so before, but a supplemental bill must be preferred." (1 Daniels Pl. and Pr., 478, &c.)

"It is a settled rule of practice that a bill defective in its charges cannot be amended after publication and cause set down, and especially after hearing, by adding new charges. Such defects can only be supplied by supplemental bill." (Chancellor Kent, Shepherd vs. Merrill, 3 John. Chan., 422.)

See also Story, Eq. Pl., 887, 886.
Bowen vs. Joley, 6 Paige, 467.
Milburn vs. Collier, 1 Clark, 315.

The order, it will be observed, did not give leave to withdraw the replication. (2 Daniel, 970.)

Vermillyea vs. Odell, 4 Paige, 122.

But further, the amended bill makes a new case. The original bill averred a contract in consideration of marriage to convey to both the complainants, or to one or the other. The amended bill expressly abandons any consideration and any contract, whether for a valuable or meritorious consideration, and proceeds entirely upon an alleged parol gift, followed by possession and improvement.

Shields vs. Barrow, 17 How., 130, 144.

1 Daniel Ch. Pl. & Pr., 454, note (2.)

In Shields vs. Barrow this Court says:

"Nor is a complainant at liberty to abandon the entire case made by his bill and make a new and different case by way of amendment. We apprehend that the true rule on this subject is laid down by the Vice-Chancellor in Verplanck vs. The Mercantile Ins. Com., (1 Edwards, Ch. R., 46.) Under the privilege of amending, a party is not to be permitted to make a new bill. Amendments can only be allowed when the bill is found defective in proper parties, in its prayer for relief, or in the omission or mistake of some facts or circumstance connected with the substance of the case, but not forming the substance itself, or for putting in issue new matter to meet new allegations in the answer. (See also the authorities there referred to, and Story's Eq. Pl., 884.)

We think sound reasons can be given for not allowing the rules for the practice of the Circuit Courts respecting amendments to be extended beyond this, though, doubtless, much liberality should be shown in acting within it, taking care always to protect the rights of the opposite party. (See Mavor vs. Dry, 2 Sim. & Stu., 113.)

And see to the same effect Walden v. Bodley, 14 Pet. 156; Snead v. McCounl, 12 How., 407.

It is not denied that the exercise of the discretionary power of an inferior Court to allow amendments, cannot be assigned here for error, but it is confidently asserted that limitations has wisely been imposed upon the power, and that where those limitations are wholly disregarded, as here, the party injured is entitled to redress.

But a still more fatal objection to the amended bill is to be found in the peculiar character of the present suit. It is a suit to enforce an alleged parol contract upon the ground that by acts of part performance, it has been taken out of the operation of the Statute of Frauds.

In such a case it is settled beyond controversy, that the complainant must establish the contract as charged, and cannot claim the execution of a different contract, though shown by proof, *or even admitted by the answer.*

The language of Chancellor Kent in Phillips v. Thompson, 1 John. C. R., 146, is explicit on this subject, "unless the plaintiff had clearly established the contract as *charged*, and also part performance of the *same contract*, he has not entitled himself to the relief sought."

In Lyndsay v. Lynch, 2 Sch. & Lef. 1, the original bill prayed the execution of a lease for three lives; the answer admitted an agreement for a lease for one life; the plaintiff then amended his bill, and prayed for a decree in the alternative for three lives or one life, and it was refused and the bill dismissed.

In Legal v. Miller, 2 Ves., 299, it was urged that the plaintiff having failed to entitle himself to a decree according to the agreement set out in his bill, might yet have a decree according to the agreement admitted by the defendant; but the bill was dismissed.

See also Denniston v. Little, 1 Sch. & Lef., 11 in note.
Leigh v. Haverfield, 5 Ves., Jr., 452.
Woolam v. Hearn, 7 Ves., Jr., 211.

Mundy v. Jolliffe, 9 Sim., 413.

Mortimer v. Orchard, 2 Ves., Jr., 243.

In Byrne v. Romaine, 2 Edw., Ch. R., 445, the answer denied the agreement alleged by the bill, but admitted another. Vice-Chancellor McCoun dismissed the bill. He says "it would be contrary to principle and against all authority to decree performance of a contract, different from the one set up in the bill."

And to the same effect is Harris v. Knickerbocker, 5 Wend., 638.

Here the bill averred a contract *bearing interest*, and the answer admitted a contract *without interest*. The decree of the Court below was reversed in the Court of Errors on account of this variation.

See the opinion of Mr. Justice Marcy, p. 642, &c., reviewing the authorities.

But if the rule were different, if the bill could be amended according to the answer or the proofs, yet the case as charged in the original bill cannot in its essentials be varied. A *new* case cannot be made.

In Denniston v. Little, 1 Sch. & Lef., 11 note, the bill stated an agreement to let to the plaintiff alone; the answer admitted an agreement to let to the plaintiff and S. D. jointly, and application was made to the Chancellor to allow bill to stand over to amend by making S. D. a party. Lord Redesdale held this would be making a *new case*.

And see 2nd Story's Eq. Jur., ss., 764, 5.

It was therefore, it is submitted, beyond the power of the Court to allow the amended bill.

But the amendment was never submitted to or allowed by the Court. The order is to be interpreted according to the state of the record at the time. At best it authorized only what was allowable as the issues stood—not to make new issues. It did not authorize the withdrawal of the replication, nor, hence, any essential change in the issues. It will be borne in mind that the amended bill was duly excepted to on two grounds: 1st. that the Court below had no authority to allow an amendment alleging a new case; 2nd, that if the Court possessed such power it had not exercised it.

See answer of appellant, Record 83.

II. That the decree is not supported by the new pleadings nor by the old evidence. Taking the new case as legitimate, what are the averments that lie at its foundation? Why, in substance that the appellant, without consideration, promised the bride expectant to give her as a bridal present one or part of one of the lots of which he was seized, to the end that with money belonging to her a dwelling-house might be erected on the premises "for the use of herself and her heirs, and as a place of residence for herself and husband;" and that the son, the husband *in futuro*, on being informed of this proviso, *approved of* the same, and *consented that the money of the bride, or so much as should be necessary*, should, after the marriage, be applied to building the house.

In these averments the Court below was able to discern an alleged antenuptial parol marriage settlement, whereby the son divested, or undertook to divest, himself of his marital rights, and also an alleged agreement by the ap-appellant to convey to the sole and separate use of the married woman and her heirs, and then, assuming there was evidence to sustain these allegations, executed both the parol settlement in favor of the wife of an insolvent, and the agreement on the part of the appellant.—See the Decree, Record, 95–6.

Now the following propositions are submitted, either of which is fatal to the decree:

1. The new bill cannot be tortured to signify a promise to convey to the *sole and separate use* of the son's wife. The averment is to give "HER as a bridal present one or part of one," &c., and the purpose of the gift, that a dwelling-house might be erected for the use of "herself and

her heirs, and as a place of residence *for herself and husband,*" *&c.* Record, 79–80.

It is no answer to say that the departure in the decree from the case as alleged in the bill though error is not injury. In cases of specific performance, whether of contract or gift, the power of the Court is confined to the execution of the contract or gift charged. In the language of Chancellor Kent in Phillips v. Thompson, 1 John., Ch., 131, 149: "It is not sufficient that the entry and use of the of the land is evidence of SOME agreement; it must be satisfactory evidence of the *particular* agreement charged, or it will not take the case out of the Statute." And as the probata must agree with the allegata, so, too, must the decree. See, also, King v. Thompson, and cases cited, page 9, of this Brief.

Again, the new bill brought in the name of husband and wife is in law the bill of the husband. If the wife seeks to recover property *for her separate use*, she must sue by her next friend and make the husband a defendant. "Where there is anything for the separate use of the wife, a bill ought be brought by her next friend for her; otherwise it is her husband's bill."—Lord Hardwicke in Griffith v. Hood, 2 Ves. Sen., 452.

See, also, Story's Equity Pl., § 63.

Sigel v. Phelps, 7 Simons, 239; Wake v. Parker, 2 Keen, 59, 70, 73–75.

And the decree in the bill of husband and wife is no bar to a future claim by the wife in respect of her separate estate.

Hughes vs. Evans, 1 Sim. and Stu., 185.

Lord Langdale in Wake vs. Parker Supra.

But 2. The evidence is as far from supporting the new case as the old.

The answer emphatically denies the case made by the so-called amended bill. Record 82, &c. No further evidence was taken by the complainants, but the case was set for hearing upon bill, answer, and replication. Record 92.

The answer then, it is submitted, is conclusive and disposes of the case. But recurring to the evidence taken in support of the old case, not a single witness testified in favor of the settlement made by the Court in its decree.

The complainants had persistently maintained the old case both by their pleadings and evidence. But if the evidence be applied to the amended bill the same contradiction, repugnance, and uncertainty will be found as have been pointed out in respect of the original bill. See this brief, page 11.

This case, indeed, may be said to be identical with King vs. Thompson, Supra.

The answer of the defendant is sustained by evidence. Record 37—77. But if the relief sought depended solely upon the evidence of the complainants, the bill would have to be dismissed, or retained solely to allow complainants an account for any moneys which went to build the house, as was done by this Court in King vs. Thompson, and by Chancellor Kent in Parkhurst vs. Van Cortlandt, 1 John, Ch. 273, 286.

To such an account the appellant by his answer consents. Record, 87.

The jurisdiction exercised by Courts of Equity in cases of part performance, is simply a substitution of parol for written evidence—a mere change of the medium of proof, but none in the certainty required by the policy of the Statute. A written contract if uncertain cannot be decreed to be executed. In Brodie v. St. Paul, 1 Ves., Jr., 326, the whole agreement was reduced to writing but there was uncertainty as to its terms, and hence it could not be enforced in equity.

So in King v. Thompson.

The answer of the appellant to the amended bill alleges, that when the building was a few feet above the ground, he refused to give his son a deed owing to his violation of the conditions of the original promise, as set forth in the an-her heirs, and as a place of residence *for herself and husband,*" *&c.* Record, 79–80.

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This averment is fully substantiated by the evidence.

See the testimony of the appellant, record 39, that of his wife, Record 53, that of Mrs. G. A. Anderson, Record 61. And against this testimony there is no jot or tittle of evidence adduced by the appellees.

The case presents, therefore, the singular spectacle of an effort to defeat the Statute of Frauds, on the ground of part performance, when the party setting up such part performance well knew he was acting at his own risk. In support of the proposition that this cannot be done, it is useless to refer to authority.

The decree in this cause then cannot stand.

In addition to the foregoing objections, the attention of this Court is respectfully called to the fact that by the amended bill, the husband is alleged to have acted "*in behalf of*" the wife in taking possession of the property, improving, &c.

There is no evidence to support these averments, which are denied by the answer. The object of the amended bill was doubtless to deprive the creditors of the insolvent husband of recourse to his property.

Such insolvency is shown by the evidence on both sides.

The Court has done for the wife what if done by the husband would be pronounced fraudulent and void. 2 Kent's Comm., 173.

As to *compensation in damages*, an indemnity instead of specific performance. See Parkhurst vs. Van Cortland, 1 John, Ch. 284, and cases cited.

Also, King vs. Thompson.

As to the relation of father and son in connexion with the doctrine of part performance.

Eckert vs. Eckert, 3 Penn., 332.

W. D. DAVIDGE, *For Appt.*

In the Supreme Court of the United States.

DECEMBER TERM, 1868.

No. 162.

JOHN E. NEALE, APPELLANT,
vs.
BENJAMIN I. NEALE AND MARY H. NEALE,
HIS WIFE, APPELLEES.

BRIEF OF APPELLEES.

KENNEDY & WEBB, COUNSEL FOR APPELLEES.

H. Polkinhorn & Co., printers, D street, bet. 6th and 7th sts.

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STATEMENT OF CASE.

The original bill states in substance that John E. Neale, the defendant below, was, in the year 1858, the owner of sundry lots of ground in the city of Washington, and, among them, of lot numbered 18, in square numbered 517, in that city; that at the time mentioned Benjamin I. Neale, one of the complaints below, and the son of the said John E. Neale, was seeking the hand of the other complainant, Mary H. Neale, and who is now the wife of said Benjamin, in marriage; that this intended marriage met with the approval and encouragement of the father, John E. Neale, who, in promotion thereof, and, as an inducement thereto, promised and agreed that if said marriage should be consummated, he would, in consideration thereof, convey by a good and sufficient deed one, or a part of one, of the lots owned by him in the city of Washington, to the said Benjamin I. and Mary H. Neale, or to one of them, in fee simple, to the end that a dwelling-house might be erected on said lot with money belonging to said Mary; that, confiding in and relying upon the promise and agreement so made by the said John E. Neale, and influenced thereby, and partly in consideration thereof, the said Benjamin and Mary did intermarry on or about the 7th of September, 1858; that at or immediately after the marriage, the said John E. Neale, mindful of the promise and agreement he had made, and with reference thereto, declared that he had given to his daughter-in-law, Mary, a lot in the city of Washington on which to erect a dwelling-house for herself; that shortly after the marriage, and in part performance of his agreement aforementioned, the said John E. Neale put his son and daughter, the complainants, Benjamin I. and Mary H. Neale, in possession of the unimproved part of lot 18, in square 517, in the city of Washington, being the east part of the lot fronting about 20 feet on H street north, and running back with that width the entire depth of the lot; that the complainants, the said Benjamin and Mary, accepted the possession of said lot, and, with the knowledge and consent of the said John E. Neale, proceeded to erect thereon, with money belonging to the said Mary, and which was her separate estate, a dwelling-house, at the cost of about five thousand dollars; that the said Mary consented to this application of the money belonging to her, cheerfully, because it was understood between herself and the said Benjamin that the said parcel of ground, with the said house, was to be conveyed to her and her heirs, or in trust for her and their use; that, after the house was erected, the complainants, Mary and Benjamin, took possession of it with the knowledge and full approval of the defendant, John E. Neale, and, with his knowledge and approval, rented it to a Mrs. Degges, and that Mary H. Neale received and applied the rents to her own uses and purposes; and that during the erection of said house, and after its completion, the defendant, John E. Neale, often avowed his intention to execute and deliver a deed of the lot and premises to the said complainant, Mary H. Neale, in accordance with his promise and agreement aforementioned.

The bill further states, that in the year 1861, whilst the said Benjamin and Mary were temporarily absent from the city of Washington, the defendant, John E. Neale, without their consent, took possession of the house and premises, and has continued to occupy and control the same ever since, against the wishes and without the consent of complainants; that even since taking possession of the house, in the manner mentioned, the said defendant, John E. Neale, has promised to execute a deed for the property to the complainant, Mary H. Neale, but has, when applied to, refused, and still refuses, to make such deed; and the bill charges that the said dwelling-house and ground belong in equity to said Mary H. Neale, and that she is entitled to a conveyance thereof from the defendant, John E. Neale, and to an account of the rents and profits thereof since he, the defendant, took possession of the same; and prays that the defendant may be accordingly ordered and decreed to convey to the complainant, Mary, and her heirs, or to some one in trust for her and their benefit, the said parcel of ground and premises, and to render a full and fair account of the rents and profits arising therefrom during his occupancy of the same, and for general relief. (R., pp. 1, 2, 3, and 4.)

The defendant in his answer admits, that in 1858 he was possessed as owner of sundry lots in the city of Washington, among which was lot 18, in square 517, and that the complainant, Benjamin, is his son; but denies that he was desirous that his son should be married to the said Mary and settled in life, and promised or agreed to convey to the said Benjamin and Mary, or either of them, the said lot, or any part of it, if such marriage should be consummated; or that in consideration of any such promise or undertaking on his part such marriage did take place, or that in part performance of such promise he put the complainants in possession of such lot, or part of lot, or that confiding in such promise the complainants did enter upon and take possession thereof and proceed to erect a dwelling-house thereon, as is alleged in the bill. He admits that a dwelling-house worth about $5,000 was erected by the complainant, Benjamin, on the said described piece of ground; that he knew that said dwelling-house was erected by said Benjamin, who, after its completion, held the same until 1861; and he admits that in July, 1861, during the absence of the complainants, Benjamin and Mary, he took possession of said dwelling-house, which had been abandoned by its tenant, and has since occupied it with his family.

Further, in his said answer, the appellant denies "that, after taking possession (of said dwelling-house and premises) as aforesaid, he promised, as alleged, to convey the said piece of ground, or that he so promised at any time," but *admits* "that after the marriage of complainants, and in 1859, when complainant, Benjamin, was about to receive certain moneys belonging to his wife from her guardian, Stanislaus Murray, respondent, *knowing that the habits of the complainant, Benjamin, were intemperate, and wishing to secure to his said wife and children the said moneys, and satisfied that the same would be in jeopardy if paid over to complainant, Benjamin, and by him used in business*, consented, on the application of complainant, Benjamin, to give him lot No. 16 in said square, provided he would allow respondent, or his wife's guardian, to build with said moneys a dwelling-house thereon, and provided the said moneys should not be paid into the hands of complainant, Benjamin, but should, for said purpose, be applied and disbursed by respondent or by the said Murray; that the complainant, Benjamin, agreed to these terms, provided the said described part of lot 18, instead of lot 16, was given; and to this change respondent assented, subject to the terms and conditions aforesaid; under this agreement the said dwelling-house was commenced, but the said conditions were wholly violated by complainant, Benjamin, who, without the knowledge or approbation of respondent, received said moneys from said Murray and used the same in his said business, or otherwise, contrary to said agreement, disposed of same." And before concluding his said answer, the appellant avers therein as follows, viz:

"The erection of said dwelling-house having progressed as far as the first story, the complainant, Benjamin, informed respondent that he, the complainant (Benjamin) would be disgraced and ruined if the work was stopped, and that he was without means to proceed further. Respondent then borrowed from the estate of the late James Sears $2,008, for which he gave his note, in which complainant (Benjamin) joined, and said note was secured by a deed of trust upon said described portion of lot 18. *This loan was paid over by respondent to complainant* (Benjamin) *with the express agreement that it should be devoted to the erection of said dwelling-house*, and should not be otherwise disposed of; but said agreement was in its turn violated, and the money was used by one of the complainants, Benjamin Neale, in his said business. This said debt was one of those due when the complainant (Benjamin) failed in said business, and *was*, with interest, *paid by respondent;* and respondent avers that he never intended to give said part of lot 18, save upon the terms and conditions aforesaid, and that upon the violation thereof he considered himself absolved from his said promise, and more especially so as *complainant* (Benjamin) *was, largely beyond the value of the house, indebted to this respondent.*" (pp. 5, 6, and 7, R.)

THE TESTIMONY IN THE CASE SHOWS—

First: That the defendant, (now appellant,) John E. Neale, did encourage the marriage of his son, one of the complainants, (now appellees,) with the other complainant, Mary H. Neale.

Second: That he did promise to give the lot in question to the said Mary H. Neale, at the time and in furtherance of said marriage.

Third: And that with his, the said John E. Neale's, consent, and upon the faith of the promise made by him, a dwelling-house was erected on the lot with the money of the said Mary H. Neale.

And fourth: That the said dwelling-house was, after its erection, rented out by the complainants as their property, with the consent of the said John E. Neale, and that the rents thereof were received by them and applied to the use of the complainant, Mary H. Neale, with like consent, down to the time when the present unauthorized possession of said John E. Neale took place.

But an attempt is made on the part of the said appellant to show that a part of the money expended in the erection of the said dwelling-house was not the money of the complainant, Mary H. Neale, but was, in reality, advanced by the appellant himself, and it may not be amiss to devote some little attention to this point.

The evidence in the cause shows that early in the year 1861 the appellee, Benjamin I. Neale, failed in business, and made an assignment of his entire stock and effects to his father, the appellant, upon secret trusts. And on his re-examination as a witness in this cause, the said Benjamin I. Neale was (by the 7th interrogatory) asked to state as nearly as he could the date of his failure in business, and the date of the assignment to his father? and he replied—"About January, 1861."—(p. 20, R.)

And John E. Neale, (the appellant,) also a witness in the cause, testified, among other things, as follows:

> "My son kept store there and failed in business. He made an assignment to me. The house (meaning the dwelling-house in controversy) at this time was up, but I was not living in the house then."—(p. 42, R.)

On his cross-examination (and by the 3d cross-interrogatory) the appellant was asked to look at the account books of Benjamin I. Neale, and see the amount of the debts due to Benjamin I. Neale at the time of the assignment. He did so, and then replied as follows: "The amount of judgments, notes, accounts, &c., which were considered *good* upon the books at the time of the assignment, amounted to $13,509.98." By the 5th cross-interrogatory he was asked to state, from the same books, the amount of stock assigned to him at the same time? and he replied—"Six thousand eight hundred and eighty dollars and eighty-three cents."—(p. 44, R.) The inference deducible from the averment ~~amount~~ above quoted, to wit, "that the Sears debt, amounting to $2.008, was one of those due when the complainant (Benjamin I. Neale) failed in said business, and *was*, with interest, *paid by respondent*," clearly is, that the appellant paid said debt with his own money, and not out of the proceeds of the assignment made to him by the appellee, Benjamin I. Neale; and that he intended, by his said averment, to convey this impression is conclusively shown by his subsequent testimony as a witness in the cause; for, in his direct examination, (and by the 14th interrogatory addressed to him by his own counsel,) he is interrogated as follows: "Was the note which was given Mrs. Sears (already spoken of) paid out of the proceeds of the goods transferred to you by your son?" And he

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On the contrary, Benjamin I. Neale, on his re-examination as a witness in the case, was asked, among other things, to state, if he could, whether said note (the note for $2,008 given to Mrs. Sears) was paid; and, if so, by whom; and what provision, if any, *he* made for its payment? To which he answered as follows:

> "The note was paid by my father—marked as confidential debt to my wife; the time of my failure, I made an assignment of my goods to my father, *he agreeing first to pay* $2,008 *out of the proceeds of the goods so assigned, on that note.* Then to pay the balance of the confidential debts, to wit: Mr. Shaw's, being about $3,000; Mr. Corcoran $900; Mr. W. E. Hamilton about six or seven hundred dollars."—(p. 19, R.)

William E. Hamilton, a witness in the cause, testified, among other things, as follows:

> "The latter part of 1860, I was clerk for B. I. Neale, one of the complainants. I was present at the time of the assignment heretofore made by B. I. Neale to John E. Neale, and the taking of the stock and inventory. I assisted in taking the inventory with some others. The stock carried into the inventory was all in the store at the time, &c. * * The witness here referred to one of the books which passed under the assignment, containing a list of the confidential debts, and being the same book previously produced by defendant, and said: I saw this list at the time of the assignment, and it is the same now, unchanged. *Among this list is a confidential debt due Mary H. Neale to the amount of* $2,008. The Mary H. Neale referred to in this list is Mary H. Neale, one of the complainants in this suit. * * *Mary H. Neale was to be paid*

out of the first money derived from the proceeds of sale under the assignment to the defendant."—(p. 74, R.)

And the appellant himself, on his cross-examination as a witness, and in answer to the 21st cross-interrogatory, testified, among other things, as follows:

"I find in the book, (the same book which was referred to by the witness Hamilton,) among the confidential debts, the name of M. H. Neale, which is intended to be for Mary H. Neale, one of the complainants. This is my son's book, and being the same book which I introduced the other day containing the list of confidential debts. The amount put down on this book as confidential to Mary H. Neale is $2,008. *The confidential debt on the book as due to Mary H. Neale is the same debt as that one paid Mrs. Sears.* The debt here is $2,008. *The name of Mrs. Sears does not appear on the list of the confidential debts due from B. I Neale.* The name of Mrs. Sears does not appear on either list as confidential or non-confidential," &c.—(pp. 46 and 47, R.)

At this point, this question suggests itself—Why was the debt of $2,008, for money borrowed of Mrs. Sears, entered on the books of Benjamin I. Neale at the time of his failure and assignment, as a confidential debt due to his wife, and as such to be first paid out of the proceeds of the assignment? And the answer, doubtless, is, because, as alleged by the appellant, the money borrowed from Mrs. Sears was secured by a deed, in trust, on that part of lot 18, in square 517, which the appellant had promised, as alleged by the appellees, to convey to Mary H. Neale; and her husband, Benjamin I. Neale, anxious, in his failing condition, to protect her interest as far as he could, naturally enough made *that debt the first of his preferred* debts, and provided for its payment out of the *first* proceeds of his assignment, in order that said part of said lot should be speedily relieved from its incumbrance. And we accordingly find that the witness, William E. Hamilton, further testified as follows:

"After the inventory was taken, &c., B. I. Neale remarked to his father that he wished the *first of those pre-*

ferred creditors, Mary H. Neale, paid, and give her a *lease* or *deed of the house, which the defendant consented to do,* and then to pay off the (other) preferred creditors, and if any (money) was left, to be divided among the general creditors, *which was agreed upon by B. I. Neale and John E. Neale.*"—(p. 74. R.)

This witness, Hamilton, was asked to state whether, in using the words "*lease or deed,*" in his preceding answer, he used them as synonymous words, meaning one and the same thing, or whether he meant that the house in question was either to be leased to Mary H. Neale for a *term of years,* or conveyed to her in fee simple, at *the option of the defendant?* And he replied as follows: "It was to be (to) Mary H. Neale in fee simple, as her house and lot. These were pretty much the words used at the time."—(p. 74, R.) When reviewed by the light of this opposing testimony, it is, we submit, hard to credit the appellant's averment that he paid the Sears debt of $2,008 *out of his own "private fund.*"

A word or two, now, respecting another of the averments above extracted from the appellant's answer, viz: "that the complainant (Benjamin I. Neale) was largely beyond the value of the house indebted to this respondent." On the contrary, Baruch Hall, a witness in the cause, testified, among other things, as follows: "I understood that Ben. (meaning the appellee, Benjamin I. Neale,) assigned his stock of goods to John E. Neale (the appellant.) I knew the fact of John E. Neale taking charge of the store. I was, before this time, employed in the store by B. I. Neale. I was there up to September, 1859. It was not long after this that I saw the defendant in charge. The witness (Hall) now corrects himself, and says that he left (the store of B. I. Neale) either in 1859 or 1860. Upon reflection, the witness says it was in the fall of 1860. * * *John E. Neale, from time to time, did borrow money from B. I. Neale; B. I. Neale's book will show it.* This was during the five years I was there. The money was not returned that I know of; that is not all of it. Ben. never borrowed money from his father to go into the business." On his cross-examination, this witness (Hall) further testified, among other things, as follows: "The defendant never loaned Ben. any money to go into business that I am aware of. I think the defendant did loan Ben. money during the progress of the business, *but nothing like as much as he borrowed. I know this to be a fact, and the books will show it.*"—(p. 70, R.)

Nicholas S. Shaw, also a witness in the cause, testified, among other things, as follows:

> "I do not recollect about the time of the assignment by B. I. Neale to John E. Neale; I do not recollect any conversation about the time of the assignment, except a conversation that occurred at an arbitration between B. I. Neale and Baruch Hall. *I heard John E. Neale say that he was largely indebted to his son,*" *&c.*—(pp. 72 and 73, R.)

And the appellant himself, on his cross-examination, testified as follows: He was asked (by the sixth cross-interrogatory) to state whether, when the assignment was made to him, the books (the account books of B. I. Neale) were delivered to him? He answered, "yes, sir." He was then asked (by the eighth cross-interrogatory) as follows: "Have the books been in your possession ever since they were originally delivered to you? He replied, 'they have.'" The ninth cross-interrogatory addressed to him was as follows:

> "You have said that at the time of the assignment your son was largely indebted to you. Please look at the books and see the condition of the accounts between you and your son, as shown by his books at the time they were delivered to you under the assignment?"

He answered as follows:

"At the time of the assignment the books showed, as kept by Ben. I. Neale or his book-keeper, the *amount of* *twenty-three hundred and sixty-nine dollars and sixty-five cents against me.*"—(pp. 44 and 45, R.)

And yet, in the face of this evidence to the contrary, the appellant has been bold enough to swear that the appellee, Benjamin I. Neale, "was largely beyond the value of the house (in controversy) indebted" to him, the appellant!

Resuming, now, a more orderly and continuous statement of the case and of the proceedings therein, the appellees, by their counsel, further say that the cause being regularly at issue, and duly set down for hearing, was heard in the first instance upon the original bill, answer, and testimony taken thereunder, at a special term of the Supreme Court of the District of Columbia, and after the same had been heard, and the proceedings had been read and considered, the said Court, of its own motion, "ordered that the complainants have leave to amend their bill filed in the cause *on payment of costs*, the amendment to be filed on or before the 15th of November, 1866."—(p. 78, R.)

The reasons which induced the Court below to pass this order are not stated in the record, and it may not therefore be strictly proper to advert to them here; but as they are believed to be equally and alike understood by the respective counsel in the case, there will probably be no controversy about them; and, as a brief statement of them may possibly be neither altogether useless nor out of place, the appellees, by their counsel, venture to say that, though in the opinion of the Court below, the evidence in the cause disclosed an equity which deserved to be respected and enforced; yet, under the pleadings, and by reason of their defectiveness, the Court decided that it could not, as the case then stood, pass such a decree as the evidence, if that were alone to be considered, ~~could~~ would justify and support; and, therefore, with a proper appreciation of the poverty of the complainants, the Court, instead of dismissing their bill *without prejudice*, as it might have done, and which, if done, would have placed the complainants under the necessity of commencing a new suit, and put them to the heavy expense of taking the testimony anew, gave them leave to amend their bill so as to make it correspond with the evidence already in the cause.

The original bill averred, as already shown, a promise on the part of the appellant to give and convey the lot of ground in controversy to *the appellees*, or *to one of them*, in fee simple; and this averment was, doubtless, objectionable on the ground of vagueness and uncertainty, and might therefore have been successfully demurred to. (See Story's Eq. Pl., sec. 245.) But, as the principles and rules of pleading only require such certainty in the averment of the title upon which the bill is founded, as that the defendant may be distinctly informed of the nature of the case which he is called upon to meet, it is, with proper deference to the Court below, respectfully submitted that, inasmuch as the appellant's answer showed that he was distinctly informed of the nature of the case which he was called upon to meet, and denied expressly that he promised to give and convey the property in question "to *the complainants*, or *to either of them*," it was competent for that Court, if in its opinion the evidence established either branch of this alternative issue against the defendant, to pass a decree in accordance with the evidence. A further, and perhaps a more material objection to the original bill was that, in the opinion of the Court below, it misstated the consideration of the promise which it averred on the part of the defendant; and, in deference to the opinion of that Court on this point, the complainants, by their counsel, availed of the leave to amend their bill upon the conditions on which it was granted; and, having first duly performed said conditions, they, pursuant to the leave, filed their amended bill in said cause.—(pp. 79, 80 and 81, R.)

The defendant answered the amended bill, and the answer will be found on pages 82, 83, 84, 85, 86, and 87, of the printed record. Afterwards, the cause being again at issue, and duly set down for hearing, was certified from the Supreme Court of the District of Columbia, sitting in equity, at a special term, to the same Court in general term, pursuant to the act of Congress in such case made and provided. (p. 95, R.) And thereupon it was heard upon the original and amended bill, the exhibits and the testimony taken thereunder by the said Court in general term; and, after the same had been thus heard and considered, the Court passed an interlocutory decree, ordering and decreeing the defendant "to make, execute, acknowledge and deliver to William B. Webb, esq., a good and sufficient deed of the real property in the proceedings in the said cause mentioned, to be held by the said William B. Webb, as trustee, for the sole use and benefit of the complainant, Mary H. Neale, &c.;" and also ordering "that the said cause be referred to William B. Webb, as a special master in Chancery, to prepare and report to the Court a deed, with apt words, to carry into effect the foregoing provisions of this decree, &c. And from this decree the defendant (now appellant) prayed an appeal to the Supreme Court of the United States." (pp. 95 and 96, R.) In obedience to this interlocutory decree the said William B. Webb afterwards, as a special master in Chancery, reported to the Court below and filed in said cause the deed "marked W. B. W. A.," (pp. 96, 97, and 98, R.,) and thereupon the said Court in general term passed a final decree in said cause, and thereby, and among other things, "further ordered, adjudged and decreed, that the said defendant, John E. Neale, do and shall duly execute and acknowledge the said paper-writing 'marked W. B. W. A.,' and afterwards deliver the same to the grantee therein named as and for his, the said defendant's, deed, of and for the piece or parcel of land therein mentioned and described," &c. And from this decree, a~~lso, th~~e defendant (now appellant) prayed an appeal to the Supreme Court of the United States." (p. 98, R.)

(As a part of the proceedings in the cause, it ought, perhaps, to be stated now, as it has not been heretofore stated, that at the hearing of the cause in the Court below, at special term, and before the reading of the bill, the ~~coun-~~ counsel for the defendant announced to the Court that he proposed, in argument, to except to portions of the testimony of the complainants, on the ground that the questions were leading, and offered to reduce to writing the special exceptions and file them in the cause; but the Court ruled that no objection to the testimony could be considered at the hearing other than such as had been taken before the Special Examiner. (p. 78, R.) And it is respectfully submitted that the point thus raised was rightly ruled by the Court, both upon reason and authority.)

POINTS.

I.

It was argued by the appellant's counsel in the Court below, and perhaps it will be again argued, that—

> "After publication has passed, and the case has been set down for hearing, the bill can be amended in no other respect than by making new parties."

Such, [redacted], it is respectfully submitted, *is not the rule* so far *as the power of a Court of Equity to grant leave to amend, in a case where justice requires the amendment*, is concerned.

"Although Courts of Equity have prescribed forms of proceeding, the latter are flexible and may be suited to the different posture of cases."—1 Story's Eq. Jur., sec. 28.

"The beautiful character, or pervading excellence, if one may so say, of Equity Jurisprudence, is, that it varies its adjustments and proportions, so as to meet the very form and pressure of each particular case, in all its complex habitudes."—Idem., sec. 439.

"In some cases where a matter has not been put in issue by a bill with sufficient precision, the Court has, *upon hearing the cause*, given the plaintiff liberty to amend the bill for the purpose of making the necessary alteration."—Mitford's Ch. Pl., p. 326.

"Even upon the hearing, as already noticed, the Court having the whole case before it, and being embarrassed in its decision *by defects in the pleadings*, has permitted amendments both of bills and answers."—Mitford's Ch. Pl., 331; Story's Eq. Pl., sec. 905.

"Great latitude is allowed to a plaintiff in making amendment, and the Court has even gone to the extent of permitting a bill to be converted into an information; it has also been held, where a plaintiff filed a bill stating an agreement, and the defendant by his answer admitted that there was an agreement, but different from that stated by the plaintiff, that the plaintiff might amend his bill, abandoning his first agreement, and praying for a decree according to that admitted by the defendant."—Daniell's Ch. Pr. and Pl., p. 463.

"If a plaintiff takes advantage of an order to amend, *so as entirely to change his case and to make the bill a perfectly new one*, he will be ordered, upon motion, to place the defendant in same position, *with regard to costs*, that he would have been in had the plaintiff, instead of amending, dismissed his original bill with costs and filed a new one."—Idem., p. 466.

"In most of these cases, the indulgence (leave to amend) given by the Court, is allowed to the mistakes of the parties, and with a view to save expense."—Story's Eq. Pl., sec. 904.

In Smith *vs.* Babcock, 3 Sumner, p. 583, the Court, among other things, said: "The whole matter (the matter of amendments) rests in the sound discretion of the Court. I should be sorry, that it should be supposed, that the Court had no authority to grant leave to file an amended answer, wherever it was manifest, that the purposes of substantial justice required it."

Daniell's Ch. Pl. & Pr. p. 481. 2.

Under and in view of the aforegoing authorities, it is, by the counsel of the appellees, confidently submitted that the Court below, in granting the complainants leave to amend, did not, in any degree, transcend its power.

II.

It was argued in the Court below, by the appellant's counsel, that the amended bill makes an entirely new case; and that the evidence taken under the original bill cannot be used in support of the amended bill.

If, in point of fact, the amended bill did make a new case, the new case might, it is submitted, under the authorities hereinbefore cited, be justified and supported. But the appellees, by their counsel, deny that their amended bill made "an entirely new case," or that it made a case *materially different* from that made by their original bill. The parties, the subject-matter, the scope, object, and prayers of the one bill are *essentially* the same as those of the other. The original bill set out a contract concerning the property it described, and prayed a specific performance of that contract for the benefit of Mary H. Neale, one of the appellees. The amended bill does the same, and only the same, things. In the original bill the *promise* was stated with ambiguity and uncertainty; in the amended bill it is stated without ambiguity, and specifically. The original bill misstated the consideration of the contract which it sought to enforce; the amended bill corrects the misstatement. At the hearing of the cause upon the original bill, answer thereto, and evidence thereunder, the

Court below saw, it is fair to say, or at least to assume, that the evidence established the existence of a contract which justice required to be specifically performed; but, as already said, in stating the contract, the original bill misstated its consideration; hence, there was a variance between the pleading and the evidence; and, as the rule that the plaintiff must recover, if at all, *secundum allegata et probata*, is too well established to be lightly overthrown, the Court below could not, in the then posture of the case, make the decree which, under other circumstances, it would have made; and therefore, in relief of the difficulty, in furtherance of justice, and that right might be established and equity administered as speedily and as inexpensively as the posture of the case would allow, the Court gave the complainants leave to amend their bill; and, when made, the amendment, it is submitted, merely corrected a mistake in the statement of a fact or circumstance connected with the substance of the case by the original bill. It did not, it is respectfully submitted, renounce the old case and substitute a new, and an entirely different one. Suppose, in the then posture of the case, the Court below, instead of granting leave to amend, had adopted the alternative course and dismissed the bill *without prejudice*, as it had, unquestionably, the power to do—would the appellant have been in any better position? On the contrary, it is submitted that his position would have been somewhat worse; for, if the bill had been dismissed without prejudice, the complainants, after paying the costs of the unsuccessful suit, (and these they were required to pay under the leave to amend, and have paid,) could, forthwith, have commenced a new suit, with a new original bill so framed as to meet the evidence, and proceeded, at heavy expense, to retake that evidence, and if the new suit proved successful, as it doubtless would, the expense of the new evidence, which he now escapes, would have fallen eventually on the appellant, and his condition, therefore, would have been worse than it is. But it has been, and possibly it will again be, gravely argued by the appellant's counsel, that it was not admissible to use the evidence taken under the original bill, in support of the amended bill. The Court below thought otherwise. The appellees' counsel thought, and they still think, otherwise. The books teach that—"The amendment is, in fact, esteemed *but as a continuation of the original bill, and as forming part of it*; for *both the original and amended bill constitute but one record.*" —1 Daniell's Ch. Pl. & Pr., p. 455.

By granting leave to amend, the Court below, instead of dismissing, retained possession of the pending suit, and its jurisdiction over the parties to it. And it would, we submit, have been a startling novelty in the administration of equity, if that Court, for the very purpose of saving the expense, trouble, and delay of taking the evidence over again, had first given the complainants leave to amend their bill so as to make it correspond with the evidence already in the case, and then, after they had made the amendment, told them that they could not use that evidence in support of their amended bill, and, therefore, that their suit must fail because there was no evidence in the case!

III.

It was argued in the Court below, by the appellant's counsel, that the amended bill does not aver *any contract*, nor *any consideration* to support a contract.

A contract, it is submitted, is "an agreement upon sufficient consideration to do or not to do a particular thing."— Blk. Com., 2d vol., p. 442.

And, according to this definition, three things must concur to constitute a contract: first, there must be an *agreement*, (*i. e.* a mutual bargain or convention between two or more persons competent to contract;) secondly, a *sufficient consideration;* and thirdly, a thing to be done or omitted. "Any benefit to the person making the promise, or any loss, trouble, or inconvenience to, or charge upon, the person to whom it is made," is a sufficient consideration to support a contract.—(Smith on Contracts, p. 141.)

The amended bill avers that shortly before the marriage of the appellee, Mary H. Neale, the appellant *promised* to give her at her marriage (as a bridal present) a lot, or a part of a lot of ground, in fee simple, *to the end that with the money belonging to the said Mary a dwelling-house might be erected thereon after her marriage for the use of herself and her heirs*, and as a place of residence for herself and husband; that, after her marriage, the appellant, *in part performance of his said promise*, put her in possession of the piece or parcel of ground now in controversy; that, *relying upon his said promise, she accepted the possession of the said piece or parcel of ground;* that, *after accepting the possession of it, she, with the full knowledge, consent, and approval of the appellant, did erect, or caused to be erected on said ground, a valuable dwelling-house for ths use of herself and her heirs, and as a place of residence for herself and husband*, at an expense of about five thousand dollars, *and paid for the same with, or out of, moneys belonging to her previous to her marriage.* These averments embody and, it is submitted, clearly set forth all the essential elements of a contract.

"Expenditure for valuable improvements induced by a parol contract, and in execution of it, is regarded in equity as a valuable consideration for the purposes of a specific execution of such contracts. (1 Lead. Cas. in Eq., Am. Note to Lester *vs.* Foxcroft, p. 569.)

King v. Thompson. 9: Pet. 219.

IV.

In his answer to the amended bill, the appellant denies that he "signed any agreement for making any conveyance or gift of the parcel of ground" in controversy; and it is possible, theretore, that his counsel will contend that, if there was a contract at all, it was a parol contract, and that it cannot be enforced on account of its repugnancy to the statute of frauds.

"In almost every State of this Union the rule is well settled that, in equity, *part performance* takes a parol agreement out of the operation of the statute of frauds." (1 Lead. Cas. in Eq., Am. Note to Lester *vs.* Foxcroft, p. 567.)

"Admission into possession having unequivocal reference to the contract, has always been considered an act of part performance.—(*Idem*, p. 567.)

The evidence shows that the appellees were admitted into possession of the lot in controversy by the appellant, and that they took possession of it with unequivocal reference to his promise to give and convey it, &c.

V.

It was heretofore, and will probably be again, argued by the appellant's counsel, that admitting the existence of a contract in the case, still its specific performance cannot be decreed, because (as the appellant's counsel argued) the terms of the promise are not clearly established, and it is not clearly shown that the expenditure of the money was induced by the promise.

It is conceded that the evidence with respect to the promise is, as it is apt to be in cases of like sort, conflicting and contradictory; yet, it is confidently submitted, the whole evidence clearly shows, and leaves no room for rational doubt, that the promise was to give and convey the ground in question to the appellee, Mary H. Neale and her heirs, to her and their use.

Benjamin H. Neale testifies that "he (the appellant) agreed to give my (witness') wife the east part of lot 18, in square 517, in consideration of my putting up a house with my wife's money thereon for her benefit.—(p. 10, R.)

Mary H. Neale testifies that about three or four weeks before her marriage, "he (the appellant) told me (the witness) that he would give me a lot for a bridal present, and that he wanted my husband to put up a fine house with my means in case of any accident in his business. * * * It was the same lot, or part of lot, on which the house in controversy was subsequently built. * * I (the witness) thanked him for it, and toid him I was very glad he had given it to me. * * He afterwards told my ma, in my presence, that he had made me that nice present, saying, at the same time, that he had no money to give me, but thought a lot would be better. After my marriage, my husband built this house with my means."—(p. 21, R.)

Francis H. Hills testifies that "I (the witness) was passing by the store, and was invited in by Captain Neale, the appellant. * * He told me that he intended to make the property (now in controversy) over to Mrs. Neale (the appellee, Mary H. Neale,) and her children, so that her husband could not use it—*the house being built with her money.*" It is but candid to add that the appellant also told the witness (Hills) that he (the appellant) had given the lot in controversy to his son (the appellee, Ben. I. Neale.)—(pp. 24 and 25, R.)

A. L. Newton testifies thus: "I (the witness) know the house and lot in controversy, and its location, very well. I have had *frequent* conversations with the defendant, &c. * * On other occasions the defendant told me that he gave that lot (the lot in controversy) to his *son's wife* as a bridal present, *for which he had not given a deed, but had intended to do so. That the house was built out of funds held in trust by Mr. Murray for Ben's wife.* * * * He, the defendant, repeated the same thing half a dozen times in distinct conversations," &c.—(p. 26, R.)

Henrietta I. Kennedy testified thus: "I never heard the defendant say anything about the property in question, but heard Mrs. Neale (the appellant's wife) *in the defendant's presence*, say that *they* (herself and husband) *had taken possession of Mrs. Mary Neale's house, as she was in the country at the time, to prevent it from being taken by the Government for the use of the soldiers.* * * This conversation took place either in the latter part of August or the first of September, in the year 1861, while Benjamin I. Neale and his wife were in Charles county, Maryland."—(p. 28, R.)

Thomas L. Noyes, a next-door neighbor of the defendant, testifies thus: "Sometime prior to the building of the house, (in controversy,) rumor became rife in the neighborhood that Benjamin I. Neale and Miss Mary Hamilton were to be married. About this time I met the defendant on the pavement, or in my house. I of course congratulated him upon the prospect of his son's marriage, and the defendant replied, apparently with great joy, that it would be a happy match, adding that she would bring him (Benjamin I. Neale, the son) ten thousand dollars; and I think it was at the same meeting, or one very early subsequent, that the defendant told me that he was about to give his son and daughter-in-law a lot of ground, *and that he would take care that the money received by her should be expended in that way by erecting a house, it being his intention or determination that no part of that money should be invested in the store,*" &c.—(pp. 28 and 29, R.)

Ann Hamilton testifies thus: "I (the witness) am the mother of Mrs. Benjamin I. Neale. About seven years ago the defendant came to my house and said his son was to be married to my daughter, and that he had no money to give my daughter as a bridal present, *but he would give her the lot to build on.* This was about three weeks before the marriage. He wanted (he said) my daughter to have a handsome house built on this lot. Nobody was present at this conversation but myself and daughter."—(p. 32, R.)

Johnson Eliot testifies, among other things, as follows: "I know the parties to this suit. I married the step-daughter of the defendant. I know there was a house erected next adjoining the former residence of John E. Neale, (the appellant,) within seven or eight years, and since the marriage of Benjamin I. Neale and Mary H. Hamilton, complainants. I have heard it was erected by Benjamin I. Neale, that is, *with money he received by his wife. This I have heard from both complainants and defendant*. In the erection of this house, the *defendant acted*, I think, *as general supervisor*. From the repeated conversations with the defendant I have an impression so strong that I am willing to testify to it as a fact, *that the house was erected with money that Benjamin I. Neale received from his wife*. These conversations took place before the ground was broken, and while the house was under erection. * * I am a practising physician in this city. I have been demonstrator and professor of the medical colleges of this city since 1844."—(p. 34, R.) It is proper to add that this witness (Dr. Eliot) also testified that the defendant told him that he had given the lot in controversy to his son.

Mary Rider testifies, among other things, as follows: "I know the complainants and defendant to this suit. I have lived with the complainants as a servant. I went to live with the complainants about the commencement of the war, and lived about two months with them before they went to the country. When the complainants left the city they left me in charge of the house in which they then lived, and not the house in question. While the complainants were in the country, John E. Neale (appellant) came to me one morning and told me he was going to move the furniture out of this house into the *complainant's or Mary H. Neale's house*. He did remove the furniture at that time, and I helped him to remove it, and it was carried into Mary H. Neale's house, being the one now in controversy. * * I lived with the *defendant* one week after this, then I quit the service. The week I lived with the defendant he lived in his own house—the one adjoining the new house—the one in controversy. Before, and after the defendant moved the furniture into the new house, *I heard the defendant say that Mary H. Neale, one of the complainants, built the house, and that he, the defendant, had given her the lot to build the house on,*" &c.—(pp. 35 and 36, R.)

But with respect to the point now being considered, the appellant himself is, perhaps, the best witness for the appellee, Mary H. Neale. Although in his answer to the original bill, in his answer to the amended bill, and in his testimony as a witness, he has positively and repeatedly denied that he ever promised to give the ground in controversy to the appellee, Mary H. Neale; yet he has, it is respectfully submitted, indirectly furnished convincing proof that, in fact and in truth, he did promise to give it to her. In his answer (as appears from the extract hereinbefore quoted) to the original bill, in setting out what he alleges to have been his conditional promise to his son, he shows unmistakably the motives which induced him to make any promise whatever in the premises, by saying (as already quoted) that "*knowing the habits of complainant* (Ben. I. Neale) *were intemperate, and wishing to secure to said wife and children* (Benjamin's wife and children) *the said moneys, and satisfied that the same would be in jeopardy if paid over to the complainant, Benjamin, &c.*, he, the respondent, consented to give him," &c., &c.—(p. 6, R.) This same statement is substantially repeated in his answer to the amended bill.—(p. 85, R.) And in his testimony as a witness he says: "The day before they (the appellees) started to Baltimore, (where they went to receive about three thousand dollars of Mary H. Neale's money, according to the testimony of the appellant,) my wife and daughters talked to Mary H. Neale; *my wife and myself* talked with Mary H. Neale, and *told her that she ought not to give her property to Ben., because it would go in the store and be lost.*"—(p. 38, R.) Again, in his testimony, the appellant said: "*The very sum and substance of the whole matter was to keep the money from going into the store.*"—(p. 39, R.)

Manifestly, the appellant, if he is to be believed at all, had no confidence in his son's ability to use money judiciously, and thought that he was eminently unfit to be trusted with it; and therefore, as it would seem, and as he alleges, he, with commendable solicitude for the welfare of his son's wife and little children, was anxious to have the *wife's money* invested for her and their benefit in such manner as to put it out of the power of her thriftless husband to squander or misuse it. How was this to be effected? Not, certainly, by giving a lot to the improvident and dissipated son, and using his wife's money in building him a house; for, if that were done, he could squander and lose the lot and money both. How, then, was it to be effected? Why obviously in the way, and only in the way, in which the appellees say the appellant promised to effect it, viz: by giving the lot to the appellee, Mary H. Hamilton, and her heirs, to her and their sole and separate use, free from her husband's control. True, portions of the testimony in the case show that, in other conversations held with other witnesses, the appellant stated that he had given the lot in question to his *son*, and his statements are, therefore, to some extent, repugnant and in conflict; but having given the lot to his son's wife as a home (or that she might thereon build a home) *for herself and husband*, the appellant may have felt justified, when disposed at times to vaunt of his generosity and paternal affection, in saying that he had given his son the lot on which he built with his wife's money; or it may be that, in so saying, the appellant had a *deeper motive*, and designed thereby to bolster up the credit of his son in a business which it seems he was unfit to conduct.

But, notwithstanding the appellant's conflicting statements, and irrespective of the motive which led to their repugnancy, it is again confidently submitted by the counsel for the appellees that, *upon the whole evidence*, it is clear that the appellant promised to give (and did give as far as he could without giving her a deed) the lot in question to the appellee, Mary H. Neale; yet, for the sake of the argument, let it for a moment be conceded that, by the light of the whole evidence, it may not be absolutely and indisputably clear that the promise was to give and convey to the appellee, Mary H. Neale; still it will hardly be denied that it is *reasonably certain* that such was the promise, and, therefore, the final decree passed in the case by the Court below should stand; for the authorities teach that "courts of equity exercise their jurisdiction in decreeing specific performance of verbal agreements, where there has been part performance, for the purpose of preventing the great injustice which would arise from permitting a party to escape from the engagements he has entered into, upon the ground of the statute of frauds, after the other party to the contract has, upon the faith of such engagement, expended his money, or otherwise acted, in execution of the agreement. Under such circumstances, *the Court will struggle to prevent such injustice from being effected;* and with that object it has, at the hearing, when the plaintiff has failed to establish the precise terms of the agreement, endeavored to collect, if it can, what the terms of it really were."—(Mundy *vs.* Jolliff, 5 My. and Cr., p. 177.)

Again, the authorities teach that "it is enough that the Court can ascertain the terms of the promise, with *reason-*

able certainty, from the whole evidence."—(1 Lead. Cas. in Eq., Am. Note to Lester *vs.* Foxcroft, p. 572.)

Parkhurst v. Van Cortland - 14 Johns p. 31.

VI.

It was argued in the Court below, by the appellant's counsel, that the only interest that can properly be claimed by the appellees in the property in controversy, is the money which went into the construction of the dwelling-house.

With respect to this point, the counsel for the appellees concede that there are many cases to be found in which the specific performance of parol contracts concerning lands, &c., has been refused, and in which, in lieu of specific performance, the money expended has, with interest, been decreed to be repaid. Some of those cases arose, however, in States (such, for example, as Tennessee and North Carolina) whose Courts have followed, strictly, the prescriptions of the statute of frauds, and have therefore uniformly refused to enforce the specific performance of parol agreements concerning lands, &c. Other of those cases in which compensation has been decreed, and specific performance refused, arose, it is conceded, in States (New York and Maryland, for example) whose Courts ordinarily decree the specific performance of such contracts after they have been performed in part; but it is respectfully suggested that if the latter cases be examined, it will be found either that the terms of the agreement in the case decided were altogether too uncertain, under the evidence, to be carried into specific execution, or else that possession of the property in controversy had not been given to, and accepted by, the complainant; and, therefore, it is submitted that those cases are not to be followed in the decision of the one now in hearing.

VII.

It was argued by the appellant's counsel in the Court below, that, as the money of the appellee (Mary H. Neale) passed through the hands of her husband (Benjamin I. Neale) in paying for the work and materials employed in building the house, it was therefore his money, for he had reduced it to possession; and that, inasmuch as the money was his, it should now, if it be decreed to be repaid, go to his creditors.

On the contrary, it is submitted that, in so expending, or disbursing, his wife's money, Benjamin I. Neale acted only as her agent or trustee; for the evidence abundantly shows that it was agreed on all hands, previous to the marriage, that her money was to be used in building the house, which, when built, was to be for her sole and separate use, free from any interest or contr~~act~~ol of her husband. Under the agreement, the money, in equity, still belonged to her, although, in point of fact, her husband may have received it from her guardian.

On his examination as a witness, Benjamin I. Neale was asked (by the 18th interrogatory) as follows:

"State whether you, on your part, acting in behalf of your present wife, agreed to accept said part of said lot, and to build thereon, for her benefit and with her money, a dwelling-house, in accordance with the terms of your father's offer?"

He replied as follows:

"*Yes; I accepted his proposition*, and conducted the building of the house."—(p. 10, R.)

"An agreement entered into by the husband, or wife, for the mutual settlement of their estates, or the estate of either of them, upon the marriage, even without the intervention of trustees, will be enforced in equity though void at law."—2 Story Eq. Jur., sect. 1370.

Both the original and amended bill allege that immediately after the house in controversy was built, (in the year

1859,) the appellees took possession of it, and that until the year 1861 it was either occupied or rented out by the appellee, Mary H. Neale, who received the rents of it with the knowledge and approval of the appellant, who made no claim whatever to the house until it became temporarily vacant (in 1861) during the absence of the appellees from the city, when, without their consent or knowledge, he moved into it; and the evidence fully sustains the allegation.

Upon this review of the whole case, it is further respectfully submitted on the part of the appellees that there is no error in the decree made by the Court below, and that the same should be affirmed, with costs.

KENNEDY & WEBB,
Counsel for Appellees.

1 Dresden
1 Poland not opposes the
amendment.

1 Flades in Eg 565

14 Pet

Phelps

6 Pet 269

Bill p. 87
Julian in 1864
Second Bill
p. 9
4 Wall. 517

2 cases 382
cops Cop